

*United States Court of Appeals
for the Second Circuit*



APPENDIX

NO. 75-7385

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

W. T. GRANT COMPANY,

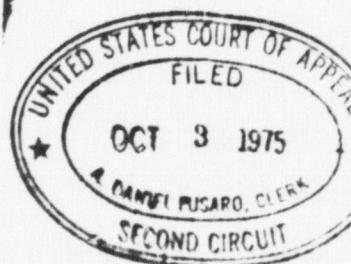
Plaintiff-Appellee

v.

MARK S. HAINES,

Defendant-Appellant

APPENDIX



On appeal from the United States
District Court for the Southern District of New York

LAYTON AND SHERMAN
50 Rockefeller Plaza
New York, N.Y. 10020
(212) 586-4300
Attorneys for Appellant

PAGINATION AS IN ORIGINAL COPY

NO. 75-7385

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

W. T. GRANT COMPANY,

Plaintiff-Appellee

v.

MARK S. HAINES,

Defendant-Appellant

APPENDIX

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PLAINTIFFS

W. T. GRANT COMPANY

DEFENDANTS

BRIEANT J.

CHRISTENSEN, JOHN A.,
 CHRISTENSEN, MAVIS.,
 HAINES, MARK S.,
 QUINLAN, DANIEL.,
 WAITS, JOHN W.-doing business as
 JOHN W. WAITS ASSOCIATES, JWW, INC.,
 CENTURION DEVELOPMENT CORPORATION,
 CENTURION OF LOUISIANA, INC.,
 MID-AMERICA DEVELOPMENT,
 DEVELOPMENT CORPORATION OF MIDAMERICA,
 INC.,
 UMBAUGH POLE BUILDING COMPANY, INC.,
 also known as UMBUGH CO.,
 FRONTIER DEVELOPMENT CORPORATION,
 DOES, JOHN I THROUGH X, the names being
 fictitious, the true names of said defts.
 being unknown to Pltff at the present time
 time

CAUSE

Violation of the Sherman Act

MW

ATTORNEYS

LIEBMAN, EULAU, ROBINSON & PERLMAN
 32 East 57 Street
 New York, N.Y. 10022
 EDdorado 505522

Deft. DANIEL QUINLAN:
 EDWIN SILBERLING, Esq.
 200 Park Ave., NYC 10017--682-2686

Defts. John A and Mavis Christensen
 ANSERSON RUSSELL KILL & OCLICK, P.C.
 630 Fifth Ave., NYC 10020--397-9700

Deft. Umbaugh Pole Bldg. Co.
 GIFFORD, WOODY, CARTER & HAYS
 14 Wall St., NYC 10005--349-7400

CHECK HERE IF CASE WAS LED IN RMA SUPERIS		FILING FEES PAID			STATISTICAL CARDS	
JUN 31 1975		RECEIPT NUMBER 6/26/75	CD NUMBER 53853 85	CARD JS-5		DATE MAILED X
				JS-6		

UNITED STATES DISTRICT COURT DOCKET

DC 111 (Rev. 1/75)

-1-

DATE	NR.	PROCEEDINGS
01-31-75		Filed Complaint and Issued Summons.
1-31-75		Filed Order of The Clerk permitting persons named to make process..Clerk.
2-3-75		Filed Pltff's Memo. of Law in support of its application for an order TRO.
2-3-75		Filed Affdvt. of Service of Elizabeth Sawyer of the Summons & Compl. upon Umbaugh Pole Bldg. Co., Inc. by R. Mitchell on 1-31-75.
2-3-75		Filed Affdvt. of Service of Summons & Compl. upon Mark S. Haines on 1-31-75. served by Allan J. Kirschner.
2-3-75		Filed Affdvt. of Service of Summons & Compl. upon John A. Christensen on 1-31-75. served by Lawrence M. Rosenstock.
2-3-75		Filed Affdvt. of Service Of Joseph Stone.... of the summons & compl upon Daniel Quinlan on 1-31-75.
2-3-75		Filed Affdvt. of Service of L.M. Rosenstock dated 2-3-75...of the Order to show Cause upon John. A. Cristensen. on 1-31-75.
2-3-75		Filed Affdvt. of Service of Elizabeth Sawyer, dated 2-3-75..of the Order to Show Cause upon Umbaugh Pole Bldg. Co., Inc by: R. Mitchell on 1-31-75.
2-3-75		Filed Affdvt. of Serice of Allan J. Kirschner, dtd. 2-3-75...of the Order to Show Cause upon Mark S. Hanines on: Jan 31-75.
2-3-75		Filed Affdvt. of Service of JOseph Stone, dated 2-3-75...of the Order to Show Cause...upon Daniel Quinlan on: 1-31-75.
2-4-75		Filed NOTICE OF APPEARANCE FOR DEFT. DANIEL QUINLAN.
2-4-75		Filed Pltff's Order to SHW Cause for Attachment & Prel. Inj....ret. 2-3-75 Rm 706.
2-4-75		Filed Memo-End on Back of Order to Show Cause filed 2-4-75....After hearing counsel for pltff. and for defts. Christensen, Quinlan & Hanines, The Court directs Orders of Attachment in the amounts requested issue against defts. John W. Waits and Mark S. Hammes only. In all other respects the relief requested is denied as being unnecessary in aid of our jurisdiction and likey to be unduly oppressive. Submit Orders of Attachment without notice....So Ordered....Brieant,J. m/n
2-3-75		Filed Order of Attachment....that any U.S. Ma shal who has recived a copy of this order shall for the district within his jurisdiction, levy upon and take possessor of such property in which de'ts. Haines, Waits and Umbaugh have an interest..... and...Pltff. file with the Clerk of the Court separate bonds for each deft. in the sum of \$226,780 for Waits, 274,495 for Haines, \$105,850 for Quinlan and \$226,780 for UMBAUGH, WITH GOOD AND SUFFICIENT SURETY, \$206,780 of which pltff. will pay to Waits all legal costs and damages which may besustained if Waits recovers judgment and that pltff. was not entitled to an attachment...:\$254,495 of which pltff. will pay to Haines if Haines recover judgment or wrongly attached.: \$206,780 of which pltff. will pay deft. Umbaugh if wronly attached...and the balance thereof, is conditioned that the pltff will pay to the U.S. Marshal all of his allowable fees...Brieant, J. Issued:2-3-75 4:45PM/ m/n
2-4-75		Filed Undertaking on Attached as to Mark S. Haines, deft...for the sum of \$254,495. that will be pay by pltff to deft M.S. Haines if pltff. was not intitled to attachment ..and the sum of \$20,000 is to be paid by pltff. to the U.S.Marshal for all his allowable fees...Total Amount of Undertaking is \$274,495..Bond#28 84 29---- ---Insurance Co. of N.A.....
2-4-75		Filed Undertaking on Attachemtn In the amount of \$226,780...As to deft. J.W. Waits.Pltff. will pay to deft. J.Q. Waits the sum of 206,780 if the pltff. was not entitled to attachemnt of deft's property...and that pltff will pay to the U.S. Marshal all his allowable fees not exceeding the amount of \$20,000..... Bond#28-84-31....Insurance Co. of N.A.
2-4-75		Filed Undertaking,in the amount of \$226,780 as to Umbaugh Pole Bldg. Co., on attachment...Pltff. will pay to deft. Umbaugh Pole Bldg. the sum of \$206,780 if pltff. was not entitled to attached deft's property and that pltff will pay to the U.S. Mashall the sum of \$20,000 for his allowable fees...Bond#28-84-32-Ins.Co. of N.A.

CIVIL DOCKET

13CIV 411 C-LG

Page 1B

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	DEFTS' ATTYS			
	GIFFORD, WOODY, CARTER & HAYS, ESQS. Attorneys for Defendant Umbrail Baile Building Company, Inc. 1 Wall Street New York, N. Y. 10001			
	ROBERT METRY, ESQ. HAMILTON METRY & WILEMAN Attorneys for Defendants John W. Waits, John W. Waits Associates, T.M., INC., Centurion Development Corporation, Centurion of Louisiana, Inc., Mid-America Development, Development Corporation of Mid-America, Inc. and Frontier Development Corporation Suite 400 100 East Liberty Street Louisville, Kentucky 40202			
	DEPT LAYTON, ESQ. LAYTON & SHERMAN Attorneys for Mark C. Haines 50 Rockefeller Plaza New York, N. Y.			
	ANDERSON RUSSELL KELL & OLIVE, P.C. Attorneys for Defendant John J. Christensen & David Christensen 630 Fifth Avenue New York, N. Y.			
	EDMUND GIBBERLING, ESQ. Attorney for Defendant Daniel Quinlan 200 Park Avenue New York, N. Y.			
	FERNZIGER WOHL Finkelstein & Steinmann 1350 Avenue of the Americas New York, N. Y. Attorneys for Defendants John W. Waits, John W. Waits Associates, T.M., INC., Centurion Development Corporation, Centurion of Louisiana, Inc., Mid-America Development, Development Corporation of Mid-America, Inc. and Frontier Development Corporation			

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
2-7-75	Filed Defts. J.A. and M. Christensens' Affdvt. In Re: the order attaching the real & personal property of defts. named.			
Feb 14-75	Filed Order to Show Cause for an order vacating attachment staying the Marshal from proceeding thereunder...with a stay...ret. 2-14-75 at 9:15AM			
Feb 10-75	Filed Letter from John H. Doyle, lll dated 2-10-75 to Judge Brieant. Re: Correcting affdvt. of J.A. Christensen, Deft.			
Feb 14-75	Filed Defts. JOHN A. CHRISTENSEN AND MAVIS CHRISTENSEN'S ANSWER. ASK&O			
Feb 19-75	Filed Order that deft. John A. Christensen be required to appear for oral deposition on 2-27-75....and Deft. Mavis Christensen be required to appear for oral deposition on 2-26-75 and deft. Mark W. Haines be required to appear for oral deposition on 2-27-75...and deft. Daniel Quinlan be required to appear for oral deposition on 2-28-75 and deft. Umbaugh Pole Bldg. Co., Inc. be required to appear for oral deposition on 3-3-75 and deft. John W. Waits be required to appear for Oral deposition on 3-4-75 all at 10:00AM at the offices of Liebman, Eulalu, Robinson & Perlman, 32 East 57 St. NYC.....Brieant, J. m/n			
Feb 21-75	Filed Stip. & Order that the time deft D. Quinlan to answer the complt. is extended to 3-21-75....Brieant, J.			
Feb 21-75	Filed Memo-End on back of Order to Show Cause filed 2-14-75...Motion granted to the extent that the Order of Attachment entered 2-3-75 is modified <u>nunc pro tunc</u> to delete all provisions for attachment of property of Umbaugh Pole Building Co, Inc. Counsel for Movant has waived costs of this motion and atty's fees...So Ordered..Brieant, J. m/n			
Feb 21-75	Filed Pltff's Notice of Deposition of Defts. listed.			
Feb 24-75	Filed Deft. Umbaugh Pole Bldg. Co. Inc.'s ANSWER AND COUNTERCLAIM			GWC&H
Feb 25-75	Filed Affdvt. of Allan J. Kirschner dated 2-24-75, in opposition to order to show cause of defts for protective orders.			
Feb 25-75	Filed Pltff's Memo. of Law in opposition to defts' application for protective order.			
Feb 25-75	Filed Defts' Order to show cause to vacate order signed on 2-14-75.... Brieant, J.			
Feb 25-75	Filed Memo-End on back of Order to Show Cause filed 2-25-75...This motion is in all respects denied except that depositions of defts. Christensen are to be held 2-27-75. See transcript of proceedings this date. So Ordered..Brieant, J.m/n			
Feb 26-75	Filed Deft's Order to Show Cause for protective order...ret. 2-24-75 Brieant, J.			
Feb 26-75	Filed Deft's Memo. in support of motion for protective order.			
Feb 26-75	Filed Memo-End on back of Order to Show Cause filed 2-26-75...Deposition of defts. Hanes and Waits et als stayed until the further Order of this Court. See transcript of hearing this date. Also styled as to Quinlan. So Ordered...Brieant, J. m/n			

CONTINUE ON PAGE#3

PAC

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
Feb 26-75	Filed Deft's Umbaugh Pole Bldg's Notice of Taking deposition of Herbert Robinson. Iss. Subp.			
Feb 26-75	Filed Deft. Umbaugh Pole Bldg.'s Notice of taking deposition of pltff.			
Feb 27-75	Filed Pltff's Notice to take deposition of F.W. Walsh.			
Feb 27-75	Filed Pltff. Notice to take deposition of Irving Trust Co. ...Issued Subp (3)			
Mar 7-75	Filed Defts. Christensen's Notice of Motion to dismiss Cts. 1 & 2 of Compl. ret. 3-19-75 AT 2PM-RM 519			
Mar 7-75	Filed Defta. Christensen's Memm of Law in support of motion to dismiss Cts. 1& 2.			
Mar 7-75	Filed Deft. Mark S. Haines's Notice of Motion for an order pur. to Rule 12, to dismiss the compl.....ret. 3-19-75...at 2PM in room 519.			
Mar 7-75	Filed Deft. M.S. Haines's Memo of Lay in support of his motion to dismiss the compl.			
Mar 6-75	Filed Stip. & Order adj. depositions as to defts. J.A.Cristensen and M. Christense...adj to 3-6-75 at 10AM .			
Mar 12-75	Filed Pltff's Notice of Motion for an order vacating the notice to take deposition e served by deft. Umbaugh Pole.....ret. 3-21-75...at 9:30Am			
Mar 18-75	Filed Pltff's Reply to answer of deft. Umbaugh Pole Bldg. Co. Inc.			
3-18-75	Filed Pltff's Notice to take deposition of First National Bank of Atlanta.(4 Subp Iss.			
3-27-75	Filed Deft. Haines's reply Memo.			
3-27-75	Filed Deft. M.S. Haines's Notice of motion for an order dismissing the action as to deft. Haines.....ret. 4-7-75...at 9:30AM Rm 607L.			
3-27-75	Filed Deft. Haines's Memo of Law in support of his motion to dismiss the action as to him...etc.			
4-4-75	Filed Memo-End on motion filed 3-12-75.....The within motion is disposed of in accordance with the Court's directions made at the hearing held March 19-75... See transcript. So Ordered....Briant,J. mm			
4-11-75	Filed Affdvt ofpltff. by James G. Kendrick dated 4-9-75...in opposition to Haines' motion to dismiss.			
4-11-75	Filed Pltff's memo of Law in opposition to deft. Haines' motion to dismiss			
4-15-75	Filed Suppl. Memo of Law in apposition to defts' motion to dismiss....			
4-15-75	Filed Pltff's Notice to take deposition of George Auerback....Iss. Subp.			
4-17-75	Filed Summons with Marshal's Returns. Served: Centurion Devel. Corp by. Bob Metry on 2-13-75 Mid-America Defel. & " " " " Frontier Devel. Corp " " " " John W. Waits. Assos. " " " " JWW, INC. " " " " Development Corp. of Mid-America " " " " Centurion of Louisiana, Inc. ----- NOT SERVED Marvis Christensen On party named Net served John W. Waits by: B. Metry 2-14-75 John W. Waits NOT SERVED 2-13-75 not served			
4-23-75	Filed transcript of record of proceedings, dated 2-24, 75			

CIVIL DOCKET

Original Docket Sheet (Original Missing) Page #4

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
5-9-75	<p>Filed Memorandum Decision#42392..... Ct. 1 of the complt. is dismissed as to all defts. for failure to state a claim . As to the remaining Counts, subject matter jurisdiction is pendent. The complt. on its face shows the absence of complete diversity.Under the circumstances of this case, we should not deem the complt. diversity, but rather should dismiss the other counts w/o prej., because of the dismissal of the first count....Pltff. may, if so advised, in the order to be entered hereon, provide for leave to serve and file an amended complt. repleading counts other than Count 1 as a diversity case....Personal service upon defts. Quinlan and Haines is vacated. Such assets as may have been attached shall remain subject thereto, and any bonds given in the action shall remain in effect pending expiration of the time within which an amended pleading may be filed, and also, to the extent the foregoing determinations are appealable, shall remain in effect pending appellate finality, or the further order of this Court.....</p> <p>Settle a single order on 10 days notice to all counsel appearing in the action.</p> <p>.....Brieant,J. mn</p>			
5-22-75	Filed Pltffs' Notice of Motion for an order granting reargument....ret. 6-2-75.. at 10AM Rm 905.			
5-22-75	Filed Pltffs' Memo of Law in support of motion to reargue.			
5-29-75	Filed transcript of record of proceedings dated <u>May 14, 1975</u>			
6-3-75	<p>Filed Order that Count 1 is dismissed as to all defts.....Counts 11-XXIX, inclusive, are dismissed w/o prej. as to all defts.....Service of process upon defts. Quinlan & Haines is vacated....and deft. Haines' motion to dismiss the complt. as to him, or in the alternative to disqualify pltff's counsel is denied...and Such assets as may have been attached and any bonds given in the action shall remain in effect pending expiration of 20 days from the date of this Order within which pltff. may serve and file an amended complt., and thereafter if such complt. be filed. The attachments and the bonds shall continue to remain in effect pending the final determination of any appeals taken from this Order or until the further order of this Court....Pltff. is granted leave to serve an amended complt. within 20 days hereof....Brieant,J. mn</p>			
6-23-75	Filed AMENDED COMPLT....Summs. Iss.			
6-24-75	<p>Filed Order that the summons and amended complt may be served upon deft. M.S. Hanes as hereinafter provided by(see Order)...Service in the manner provided herein may be made by any person authorized to make service with NYS or by any person authorized to make service by the laws of the State in which service is made, or by the U.S. Marshal, or deputy marshal...Proof of such service shall be filed within 20 days thereafter with the Clerk of this Court....Service of the summons and complt (amended) upon deft. D. Quinlan be made by any person authorized in accordance with the laws in effect where service service is made...Brieant,J.mn</p>	(cont. on #5)		

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
6-24-75	Filed Pltff's Memo of Law in support of motion for an order permittin Altern. service.			
6-26-75	Filed deft (Umbaugh) notice of motion for summary judgment. 9(g) statement included.			
6-26-75	Filed deft (Umbaugh) memo of law in support of motion for summary judgment			
6-26-75	Filed Deft. M.S. Haines's Notice of Appeal to USCA from ent 6-3-75....Copies of Appeal mailed on 6-27-75 to: Anderson, Russell, Kill & Olick, P.C.: Edwyn Silberling, Esq.; Gifford, Woody, Carter, & Hays, Esq.; Ferziger, Wohl, Finkelstein & Steinmann; Lieberman, Eulau, Robinson & Perlman.			
7-1-75	Filed Pltff's Affdvt of Personal servb of by. E. T. Sawyer, dated 6-27-75 Upon: Gifford, Woody, Carter & Hays Esqs; Ferziger, Wohl, Finkelstein & Steinman, Esqs; Layton & Sherman, Esqs; Anseren Russell, Kill Olick on 6-23-75.			
7-3-75	Filed Stip. & Order adj. deft's motion for summ judg until 7-31-75 at 9:30Am ..Brieant,			
7-10-75	Filed transcript of record of proceedings, dated <i>August 14, 1975</i>			
7-23-75	Filed certain defts notice of motion to dismiss the compl. Ret. 8-6-75.			
7-23-75	Filed certain defts memo of law in support of motion to dismiss.			
7-24-75	Filed deft (Mark Haines) affdvt & no ice of motion to settle record on appeal re transcript of Mark Haines interrog. Ret. 7-29-75			
7-25-75	Filed Deft (Quinlan) Notice of Motion to Dismiss + Affdvt, the amended compl, pursuant to Rule 12 of the F.R.Civ.P.			
7-25-75	Filed Deft (Quinlan) Memorandum in support of his motion to dismiss pursuant to Rule 12.			
7-25-75	Filed Pltff's Statement pur. to Rule 9(g)			
7-25-75	Filed Pltff's Memo of Law in opposition to deft. Umbaugh Pole Bldg. Co. Inc.'s Motion for Summ. Judg.			
7-22-75	Filed Stip & Order between Pltff. & Certain Defts. that the for daild defts to answer the emended compl is ext until 7-21-75....Brieant,J.			
7-22-75	Filed Stip. & Order that the time for defts J.A. Christensen & M. Christensen to answer the emended compl is ext to 8-29-75...Brieant,J.			
7-29-75	Filed Deft. Umbaugh Pole Bldg Co's Reply Afflvt, by L. R. Project in support of Umbaugh's motion for summ judg.			
8-1-75	Filed Pltff Rejoinder Affdvt by Allen J. Kirschner.			
8-1-75	Filed Deposition of deft Umbaugh Pole Bldg Co by G. Auerbach taken 5-12-75.			
8-1-75	Filed Affdvt of T. M. Rosen in opposition to Haines motion for an order directing Grant to submit the transcript of Haines'			
8-1-75	Filed Deposition of R. D. Mitchell taken on 3-13-75.			
8-1-75	Filed Memo-End on back of motion filed 7-21-75...The declines to direct production of the in camera exhibit at this time.....It shall be submitted in camera to the USCA as part of the record...All available transcripts of hearings shall be docketed and filed fore-with...So Ordered....Brieant,J. nn			

CONTINUE ON PAGE 46

3-14-75 Filed Certain Dchts' Notice of Motion to Dismiss....ret 3-19-75....at 2 PM

3-14-75 Filed Dchts' Memo of Law in support of their motion to dismiss.

Aug 5-75 Filed pltff's memo of law in opposition to motion to dismiss for lack of venue.

Aug 5-75 Filed affidavit of R. Kelly in opposition to motion of deft.

Aug 25- Filed transcript of record of proceedings, dated June 23, 1975

8-7-75 Filed Notice to Docket Ck that the record has been certified and transmitted to USCA on 8-7-75.

8-18-75 Filed pltff's affdvt of service of rejoinder affdvt in opposition to def Umbrugh's motion for summary judgment.

8-20-75 Filed deft (Haines) affdvt & notice of motion to dismiss the amended complt. R.t. 9-25-75

8-26-75 Filed Additional Summons with Marshal's Return. Served:

Daniel Quinlan by personally Served on 6-27-75

Mark S. Haines (Not Served)--- by Nail & Mail at 7 Habershaw Way. Altanta Ga on 7-2

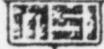
Mark " Haines

by Placing in mail Box and served by Mail on 6-26-75

Mark S. Haines

Not Served

9-8-75 Filed Affdvt of Robert Keno, date 8-28-75...In Re: Serves of Amended Complt. etc. upon attys for deft Mark S. Haines on 8-27-75.



TRANSCRIPTION OF MARK S. HAINES/ALLAN KIRSCHNER INTERVIEW-JANUARY 31, 1975

AK: This is Allan Kirschner at W.T. Grant, 1515 Broadway. Mr. Haines, you understand that our conversation is being taperecorded, is that correct?

MH: That's correct.

AK: You have no objection to that?

MH: No objection.

AK: When did you first become employed by Grant?

MH: Approximately ten (10) years ago.

AK: And what position did you have when you started with the company?

MH: Assistant Real Estate Negotiator.

AK: And what is your present position?

MH: Real Estate Manager of the Southern Region.

AK: And what does that entail? What type of duties do you have?

MH: Including site locations, working on all real estate matters, lease extenstions, store closings, lease cancellations, all real estate matters.

AK: In other words, you have responsibility for negotiating and approving leases in certain areas, is that correct?

MH: That's correct.

AK: Do you have a superior?

MH: Jack Christianson.

AK: Do you know a John Waites?

MH: Yes, I know John Waites.

AK: Has he been doing business with the company that's known as Sinchurian Development Corporation?

MH: Yes, that's correct.

AK: Is that his company?

MH: As far as I know.

AK: Is there a MidAmerica Development Corporation or Association that your aware of?

MH: That I'm not aware of.

AK: Have you heard of an association, John W. Waites Association or Associates?

MH: Yes.

AK: And that's Mr. Waites' as well?

MH: Yes.

AK: Is there a JWW, Inc. as well?
MH: There could be. I'm not sure.

AK: Do you know of any other organizations that Mr. Waites is involved in?
MH: No, I don't. The last I heard of him which was about a year ago, he
was involved with in Atlanta and I don't know if that was
under Sinchurian or not.

AK: Is it a correct statement that Mr. Waites and his companies were in the
business of developing shopping centers which were leased to others?
MH: That's correct.

AK: Do you know a Mr. Charles Turner?
MH: Yes.

AK: Who is he?
MH: He worked for Mr. Waites. I think he was an attorney or a leasing
man. I'm not sure which but he did work for Mr. Waites.

AK: Charles P. Head, Jr.?
MH: Yes. He worked for Mr. Waites also.

AK: Do you know in what capacity?
MH: I think leasing but I'm not sure.

AK: When did you personally start to do business with Mr. Waites and his
associates?
MH: I met Mr. Waites in regard to, actually in one of the first deals I
made in the Midwest which was Mayfield, Kentucky. He was a broker at
the time. I don't know acting under what company name, but I made a
Grant Shopping Center deal with him in Mayfield, Kentucky.

AK: And do you know approximately when that was?
MH: I'd have to check the records. I would say it was about a year after
I came into the company. I was working out of the Chicago office.

AK: Approximately nine (9) years ago?
MH: It can be checked by when the store opened.

AK: Offhand, could you tell me the Shopping Centers and locations that you
negotiated and leased for W.T.Grant?
MH: With Mr. Waites?

AK: With Mr. Waites.

MH: Well, there was Mayfield, there was Richmond, Kentucky; Ratcliff,
Kentucky; Louisville, Kentucky. There was another one and I can't
recall it.

AK: There was another one or two?
MH: They would be in Kentucky. I dealt with Waites because he was the man
to get the property and supposedly politically orientated to get the
zoning and all that sort of thing.



AK: Do you know the approximate dates that these leases were entered into? Over what period of time?

MH: Well, I was in the Midwest for eight (8) years so I would say over a period of four (4) years, 5 years.

AK: Until when? Until what period?

MH: Well, until Mr. Waites was incapable of producing a shopping center. He got into financial trouble and I no longer did business with him.

AK: How long was that? As best as you can recall?

MH: Four (4) years ago. I would say something like that.

AK: Mr. Haines, in connection with your dealings with Mr. Waites and any of his associates, did you accept or agree to accept any gifts or gratuities of any kind whether cash, merchandise, automobiles, trips, vacations or any type of benefits from Mr. Waites or any of his associates?

MH: I went on a number of trips with Mr. Waites.

AK: When was that?

MH: I don't really recall. It was over a period of time. He had his own plane. We would look at a location in Kentucky and then perhaps get on the plane and go to Florida for the weekend.

AK: When you went on these trips with him, did he pick up the tab?

MH: Yes, he did.

AK: That would be for the hotel, food and entertainment, etc?

MH: Yes.

AK: Do you have any idea how many such trips there were?

MH: Six to a dozen.

AK: And do you recall the locations of those trips? Where you went?

MH: Florida. One was to St.Thomas. It was mostly to Florida.

AK: Do you recall where you stayed?

MH: Ocean Reef, The Hawaiian Village in Tampa.

AK: And in St.Thomas?

MH: Sure-Gare-Re Hotel.

AK: Who accompanied you on those trips?

MH: Either I was alone or with my wife.

AK: Do you have any children?

MH: Yes.

AK: Did they accompany you at all?

MH: No.

AK: In the latter part of 1967 or possibly 1968, did you receive three \$5000 payments from Mr. Waites or any of his associates?

MH: I have a number of loans from Mr. Waites. There were never payments.

AK: How did that come about that Mr. Waites loaned you money?

MH: It came about because I was involved in a divorce and I needed cash for a divorce settlement.

AK: And do you recall how much money you received from Mr. Waites or his associates?

MH: I have a record at home. I don't know offhand.

AK: Did you sign promissory notes?

MH: Yes, I did.

AK: And you have those notes at home?

MH: Yes.

AK: Have you repaid any of the loans?

MH: Not as yet.

AK: Have you paid any interest on any of the loans?

MH: No.

AK: Was there interest on the loans?

MH: There was no interest.

AK: Did you give any collateral for the loan?

MH: No.

AK: In connection with these loans, did you receive the \$5000 checks that I was talking about? Three (3) \$5000 checks?

MH: I believe so.

AK: Did you also receive a series of \$3000 checks?

MH: There was a series of checks, yes.

AK: Do you have any approximate idea of the amount of the money you received from Mr. Waites or his associates?

MH: There are two areas involved with that. The first was the loans. The other was a project that I got involved with in Mexico because my children were living down there and Mr. Waites was involved with the building of a house down there and he wanted an interest in it, and so certain of those checks were to get either ownership or use of the property in Mexico.

AK: Where in Mexico?

MH: Puerto Vallarta, Mexico.

AK: Do you still own the house there?

MH: No.

AK: You sold it?

MH: It was sold about two months ago. It was never finished.

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AK: What became of the proceeds?

MH: I am presently holding the proceeds.

AK: And how much money did you receive from Mr. Waites --Was it from Mr. Waites or one of Mr. Waites' companies that you received the money in connection with the house in Puerto Vallarta?

MH: It was from one of his companies. I don't think it was one of his personal checks.

AK: And how much money did you receive from him in connection with that house?

MH: I would say somewhere in the neighborhood of \$20,000. I'm not exactly sure, as I said.

AK: But you have records of it?

MH: Yes.

AK: And the amount of money you received as loans?

MH: That was \$15,000.

AK: Total \$15,000?

MH: Yes.

AK: So, what you're telling me then is that that the monies that you received from Mr. Waites through any of his companies or associates was not in connection with entering into shopping center leases by Grant.

MH: Absolutely not.

AK: I'm going to show you a series of checks and ask you if you can identify them for me. They are copies of the front and reverse side. And tell me what the purpose of these particular checks were, alright?

MH: I'll do my best.

AK: Here's a check dated July 21st, 1972 #126, signed by--looks like Mr. Waites and see if you can tell me about that check.

MH: I believe, if this is '72, this was in regard to the Mexican house.

AK: And do you know whose handwriting is on the check?

MH: The front of the check? No, I don't.

AK: What about the signature? Can you recognize the signature?

MH: I believe it looks like Mr. Waites' signature.

AK: And on the reverse side of the check, is that your signature?

MH: Yes, it is.

AK: Could I ask you the cost of the house?

MH: The total cost was about \$40,000 and it was sold for \$36,500 at a loss.



AK: Was there any reason why you didn't finish the development and building of that house?

MH: There economic problems in Mexico and it was just a lost cause. I couldn't finish the house. It was too far away and my children moved out of Mexico. There were a lot of reasons.

AK: This is another check for \$3000. It's dated September 7th, 1972 #213 and it's made payable to Mark Haines. I'll ask you again if you can tell me the purpose of that check?

MH: Of the ones in '72 were the purpose of the Mexican property. The signatures are as before.

AK: Mr. Waites on the front and yours on the reverse.

MH: That's correct.

AK: I have three other checks, numbered 310, 389 and 468, each in the amount of \$3000 and dated October 31, 1972, November 16th, 1972 and January 2nd, 1972 payable to Mark Haines or Mark S. Haines. Same question about these.

MH: These are for the same purpose.

AK: All three of them.

MH: Yes sir.

AK: And could you identify the signatures for us?

MH: Mr. Waites is on one.

AK: Which one is that?

MH: Check Number 310 and on check 389 and 468. That was Mr. Waites' secretary, Cathy something or other.

AK: Conway?

MH: Could be. I don't recall. I know he had a secretary named Cathy.

AK: There's another check in 1972 but it's for \$392.11. It's No. 319 dated October 13th, 1972 and tell me about that check.

MH: I think this was for when I was using Mr. Waites' car and got into an accident and this was to pay for the damages. I paid for the damages and this was to reimburse me.

AK: Two more checks for 1972, each payable to Mark Haines, each in the amount of \$3000, #336, 675, October 10th, 1972 and April 13th, 1972. I ask the same question about those.

MH: Well, one here is indicated as a loan and I don't know how they handle it in their books but these both were for the Mexican property. All the ones in 1972 were when I was involved in that. I didn't notice if any of the others said loan or not.

AK: The one number 310, October 31, 1972 also says loan but you say that was for the Mexican property as well.

MH: Yes sir. And I don't know whose signature is on this one.

AK: Which one are you referring to?

MH: Matthews.



AK: The signature on the reverse side though is yours?
MH: Yes sir.

AK: I have two other checks for \$3000 each in 1973, #506 dated January 26th, 1973 and 578 dated February 8th, 1973. Each of these are marked "loan" I believe. 578 is clear. 506 looks like the word loan but I'm sure. I'll just call these to your attention and ask you about these checks.
MH: That was even in regard to the Mexican property.

AK: And the signatures on the checks?
MH: Mr. Waites' and mine on the back.

AK: I have one other. This is 778 payable to Mark Haines, July 2nd, 1973, \$3000 and it is marked loan. Is your answer the same in regard to this check?

MH: Yes sir. That's the Mexican property.

AK: These are ten checks for \$3000 each that you told me relates to the Mexico property which is \$30,000. Do you recall if there were any other monies you received from Mr. Waites in connection with the Mexico property other than the \$30,000 set forth in these checks?

MH: I really couldn't say. It was approximately around that figure, as I recall. It might have been another but I'm not sure.

AK: Did he ever lend you money by cash? MH: No sir.

AK: I have a \$5000 check #580 dated March 2nd, 1973 payable to the order of M.S. Haines and I ask you to identify this check, if you will.

MH: This was a loan for a gentlemen named Ron Rosengran who was living in Mexico and doing the electrical work on that. He was out of work and he asked me if they was any way I could get some money for him to borrow and this was through me to Mr. Rosengran.

AK: Did you know Mr. Rosengran?
MH: Yes.

AK: What relation did you have with him?

MH: He was an acquaintance over the last number of years and he was living in the same town of Mexico with his wife and children. He was actually supervising the construction of the house for me. He was unemployed at the time.

AK: Did you have any business dealings with him?
MH: No business dealings.

AK: Mr. Waites have any business dealings with him?

MH: He met him and I don't know if they had any business dealings or not. I don't think so.

AK: Mr. Waites understand that the loan was for Mr. Rosengran?
MH: That's correct.

AK: Do you know if Mr. Waites has been repaid?
MH: I know he has not.

AK: You know he has not?

MH: Because I spoke to Mr. Rosengran about two weeks ago. He was supposed to repay it upon closing of an estate in Chicago which has not closed yet and is supposed to close sometime next month.

AK: Do you know where Mr. Rosengran is living now?

MH: He lives in Atlanta, Georgia.

AK: Is he now employed?

MH: He's not employed.

AK: And so this \$5000 check #580 is addition to the \$15,000 worth of loans made to you that you told me about before. Is that correct?

MH: Yes sir, even though Mr. Rosengran is aware that it's his responsibility to repay it.

AK: How did it come about that Mr. Waites and you decided to purchase this property in Puerto Vallarta?

MH: As I said, I got involved in Mexico because my children were living there. On one of my trips there, Mr. Waites asked if he could meet there. He'd like to see what the town was like and he liked the town and said I'd like to help you build a house as long as I can use it. We can split it however you want to work it. It was a very informal setup. He was looking for a vacation place and I was looking for a place that at some point I would have for myself and my kids.

AK: Was this during a time when you were negotiating with Mr. Waites and his companies for shopping centers on behalf of Grant?

MH: I imagine so, yes, but if you're trying to get to the inference that he was paying for picking locations, I do resent it.

AK: I'm asking questions. So there's no misunderstanding, I do want to find out. These things have evidently come to our attention -

MH: I understand that. I want to clear the air as I'm sure you do.

AK: And I appreciate your openness and your honesty and I think it's important to you and to the company so I'd like to hear whatever you have to say. Whatever inference you draw from what I'm saying-- anything you want to add please do so because I'm only interested in finding out the truth, ok?

MH: OK.

AK: Now, with regard to the loans to you that you told us about in connection with your matrimonial problems, how did that come about? How did the borrowing of money come about?

MH: I went to Mr. Waites and I told him I was in trouble! I would like to borrow some money for the purpose which I told him. I needed it for the divorce and I needed it for a settlement.

AK: Did you eventually settle your divorce?

MH: Yes, I did.



AK: Was there a written separation agreement?
MH: There's a written divorce agreement.

AK: Was it in court or out of court?
MH: No, the agreement was out of court but it was finalized in court.

AK: So there's an agreement that relates to your payments to your former wife. What is her name?
MH: Lana.

AK: What name does she go under now?
MH: Lana Haines.

AK: And where does she live?
MH: Long Beach, California

AK: Do you know her address?
MH: Yes, I do. 524 Coronado, Long Beach, California.

AK: She living there with your children?
MH: Yes.

AK: How many are there?
MH: Two children.

AK: How old?
MH: The boy is 11 and the girl is 7.

AK: When were you divorced?
MH: It's about six years ago.

AK: And you've remarried?
MH: Yes.

AK: The trips you went on with Mr. Haines where your wife accompanied you, that's your present wife?
MH: My present wife, that's correct.

AK: When did you remarry?
MH: Almost immediately after my divorce.

AK: Do you recall the amount of the cash settlement that you paid to your former wife?
MH: I think it was \$28,000.

AK: Was that in a lump sum payment or over a period of time?
MH: Lump sum.

AK: Did you have attorneys representing you in your divorce?
MH: Yes.

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AK: Where was it?
MH: In Chicago.

AK: Do you recall the names of your attorneys?
MH: My attorney was Mr. David Mann.

AK: And do you know his address?
MH: It's on South La Salle Street.

AK: Do you recall or do you know into what banks you deposited the checks that were given to you by Mr. Waites in connection with the Mexico property?
MH: Most likely it's the bank they dealt with in Atlanta, the First National Bank of Atlanta.

AK: Did you have any dealings with any other banks?
MH: I have another checking account at the First Georgia Bank.

AK: And where's that?
MH: In Atlanta.

AK: Do you have any bank account outside of Atlanta?
MH: No sir.

AK: Did you during the period of your dealings with Mr. Waites?
MH: I had account in Mexico.

AK: Do you recall the name of that bank?
MH: No, but I can get you that information.

AK: Do you recall into what bank the \$15,000 loan you received from Mr. Waites was deposited?
MH: That might have been the Madison Bank in Chicago.

AK: Other than the monies that we've been talking about so far, the monies relating to Mexico, the repayment of the car damage, the loan to Mr. Rosengran and the loan with respect to the matrimonial problems, did you receive any other monies, checks, cash, gift certificates or otherwise from Mr. Waites?
MH: There were country hams for Christmas.

AK: You mean he would send you Christmas gifts each year?
MH: That's about it. I can't recall anything else.

AK: Do you own a car?
MH: Yes sir.

AK: Did you own a car when you were dealing with Mr. Waites and his associates? What type of car?
MH: A Comet, an Audi and an MG, and during that period I was driving one of his cars for a while which was a Cougar.

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AK: How did that come about? Driving his Cougar?

MH: His brother has a car dealership and whether the Comet broke down or something, he said I could use the Cougar for as long as I needed it. I believe I used it for a year, a year and a half.

AK: In whose name was the Cougar registered?

MH: I believe the ownership was retained by his brother's firm.

AK: What state license plates were on the car?

MH: Kentucky.

AK: Let me just get back to the Comet, the Audi and the MG. Those were your own cars registered in your own name?

MH: My name and my wife's name.

AK: In connection with use of the Cougar, did you also have the use of any credit cards belonging to Mr. Waites or any of his associates, or companies.

MH: I had in my possession for a period of maybe 3 months, a gas credit card. I think it was Texaco which I might have used twice.

AK: How did you obtain possession of that card?

MH: It was in the car and I informed Mr. Waites and he said use it if you have to.

AK: Is it correct that you used the car until sometime in 1973? Would that be a correct estimate?

MH: 1972 maybe.

AK: After Atlanta, you were transferred to Chicago, is that correct?

MH: No, after Chicago, I was transferred to Atlanta.

AK: Did you also have a Ford Station Wagon that you used?

MH: A Pontiac Station Wagon.

AK: Whose was that?

MH: That was Mr. Waites.

AK: And when did you have that?

MH: For a period of maybe 3 months.

AK: When was that?

MH: 2 years ago.

AK: Where were you at the time?

MH: In Atlanta.

AK: Do you recall whether or not any automobile was delivered to your home by one of Mr. Waites' employees, Mr. Daniel Cox.

MH: Never happened.



AK: After July 1973, did you have the use of a 1972 Cadillac Eldorado.
MH: Yes, I did.

AK: Whose was that?
MH: Mr. Waites'.

AK: Where was that?
MH: In Atlanta. He had his son's car. His son was in Japan and my MG was in the shop for an extended period of time and he said I could use his cadillac until his son returned from Japan.

AK: And how long did you use the cadillac?
MH: I used it for about 3 or 4 months?

AK: Did you use any credit cards of Mr. Waites in connection with that?
MH: No sir.

AK: Did you use any other cars, station wagons of any kind that belonged to Mr. Waites or his associates or any of his family other than the 3 you just told me about?
MH: No.

AK: Did you use any other credit cards belonging to Mr. Waites, any of his companies, his associates or his family other than the ones you told me about?
MH: No.

AK: When Mr. Waites and yourself went to Mexico, did you go anyplace else other than Puerto Vallarta?
MH: Mr. Waites accompanied my wife and myself to the Olympics in 1968. I had planned the trip. I had made all the reservations and he said that he and his wife would like to join us and they did. That was, I think his first trip to Mexico. That was Mexico City in Acapulco.

AK: Did he pay for that trip as well?
MH: No, I paid for that trip.

AK: For both of you or just for you and your wife?
MH: For my wife and myself. The trip was already paid for when he asked to go along. He paid for his own portion.

AK: After that trip, did you make any other trips to Mexico with Mr. Waites?
MH: The one to Puerto Vallarta.

AK: Just that one?
MH: I believe that's all.

AK: You didn't go back to Acapulco with him?
MH: No sir, I don't think so.

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AK: Do you recall taking any trips with Mr. Waites to the Bahamas?
MH: I don't think I went to the Bahamas with Mr. Waites, No.

AK: Did you take any trips with anyone else in Mr. Waites' organizations?
MH: No.

AK: Have you ever been to Hilton Head Island?
MH: No.

AK: Do you know where it is?
MH: I know about it.

AK: In addition to the Waites' organizations, can you give me a list of
the other shopping center developers that you dealt with?
MH: Well, I dealt with Glenmark Associates in Michigan
out of Indianapolis, Melvin Simon Associates out of Indianapolis,
Ben Sec out of Sioux City, Iowa, Ellis Baine in Illinois, Arlen
Realty. Mr. Waites joined up with Arlen realty for a period of
a year in 1972 and he opened an office in Atlanta. Delco Development
Company.

AK: Arlen Realty had a lot of suborganizations as well, is that correct?
MH: Yes.

AK: Where were they headquartered?
MH: They have an office here in New York and have an office in Chattanooga
also.

AK: What is your home address?
MH: 7 Haversham Way, Atlanta.

AK: In addition to your employment by Grant, do you have any other
business interest?
MH: Mr. Quinlan and I through a man he found in his travels have started
a, I guess you could call it an art business. Both Dan and I enjoy
art and collect what we can of it and he found a gentlemen who had a
collection and we bought a few pieces and are in the process of
trying to sell.

AK: Where do you do business?
MH: Well, we have no place of business, it's just acting as a collector
and trying to find someone else who might be interested in a piece
of art or selling it through auction. That's the only other business
and it's like a hobby.

AK: Do you have any idea of the value of that business?
MH: 0 at this point.

AK: Do you own the art?
MH: We own 4 or 5 pieces which we found out two are possibly not authentic.
We have one piece which we will be sending over to Parke Bernet,
hoping that will be authentic.

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AK: Where is this located?
MH: One piece is in Atlanta and four pieces are in Chicago with Dan.

AK: Do you recall what you and Mr. Quinlan paid for those?
MH: I think the total value or total purchase price was \$14,000 for all the pieces.

AK: Is your wife involved in any business?
MH: No.

AK: Do you own your home?
MH: I hefty mortgage on it.

AK: Do you and your wife have any other bank accounts other than the ones you told me about?
MH: My wife has her own checking account at the Senas Bank in Atlanta.

AK: What was your salary last year?
MH: Approximately \$30,000.

AK: Did you yourself or did any member of your family or did anyone else receive on your behalf any other type of payments, whether they were gifts, gratuities, whether at Christmas time or otherwise from any shopping center developments or other persons or companies with whom you did business with on behalf of W.T. Grant?
MH: There were numerous Christmas gifts. Suitcase, transistor radio, items like that.

AK: From whom did you receive them?
MH: The suitcase, I can tell you because it comes every year from L. Simon and Associates. It is a standard Christmas gift. The other others I don't recall. Intercoast Development Company is another one you can add to your list.

AK: Did you or your wife or any member of your family or did anybody on your behalf receive any government bonds, gift certificates, jewelry, furs, silverware, furniture, automobiles, clothing, vacations, interest in any business venture or other benefits that you told us about from any companies or organizations or persons that you leased stores from on behalf of Grant?
MH: NO.

AK: So, you've given me the whole gambit now.
MH: Yes sir.

AK: Did you inform anyone at Grants that you and Mr. Waites decided to purchase property together in Puerto Vallarta?
MH: I might have mentioned it to Jack Christianson. It was a very loose arrangement. Mr. Waites, just by nature jumps into things, I'll do this, I'll do that, this looks interesting so I don't know if I said we were going ahead with it in Mexico. It was a very loose arrangement.

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AK: Do you know if he told anyone?
MH: This I'm not aware of.

AK: Are you aware of the fact that Mr. Christianson and Mr. Quinlan received monies from Mr. Waites?
MH: No, I'm not.

AK: When I say Mr. Waites, I'm including his companies. You understand that?
MH: Yes, I understand.

AK: I'm going to show you a series of checks. Actually, I'm going to show you one check to John Christianson dated August 4, 1972 in the amount of \$10,000 and ask you if you've seen it before and if you know anything about it.

MH: No, I haven't seen it before and I don't know anything about it.

AK: Are you familiar with the Umbrella Pole Building Company?
MH: Never heard of it.

AK: Do you know one way or the other whether or not Mr. Waites's or any of his companies made any improvements onto Mr. Christianson's property?

MH: I don't know.

AK: Mr. Christianson lives in Connecticut, I believe?
MH: Madison, Connecticut.

AK: He has horses and a horse farm?
MH: So I understand. I've never seen it.

AK: I was going to you if you've been there.
MH: I talked to Jack about it, because I used to teach horseback riding and I knew he was involved with it but I've never seen his house.

AK: Do you know a Gene Nelson?
MH: I know a Gene Nelson who works for Cloth World.

AK: Did you loan with Mr. Arms negotiate and propose sublease of a Grant store located in Pensacola, Florida?
MH: Yes, I negotiated that. Mr. Arms was working for somebody else in Cloth World Organization.

AK: What was the rental for that store, do you recall?
MH: I believe \$33,000.

AK: Was a figure of \$35,000 ever negotiated?
MH: I believe so, yes. It was \$35,000 and it was reduced for brokerage commission.

AK: Who was the broker?
MH: Mr. Brian Clancy.

AK: Where is he located?
MH: He's located in Atlanta.

AK: With whom is he with?
MH: Commercial Realty Associates, I believe.

AK: Did you ever inform anyone at Grant that there was to be a broker in this deal?
MH: I don't believe so because it was going to be paid by

AK: You did or Did you intend to receive any portion of the commission to be paid in connection with those negotiations with the Pensacola sublease?

MH: No, I did not. I got Mr. Clancy involved as a broker because he had been fired from his job. He was out of work.

AK: Clancy's a friend of yours?
MH: Yes.

AK: Did you have any prior dealings with Mr. Clancy while you've been with Grant?

MH: He worked for Intercoast Development Company. He was their representative in the South.

AK: Do you know a Lee Jenkins?
MH: The name is familiar. I can't recall.

AK: Would it help to refresh your memory. Is he with Cloth World as the Regional Representative?

MH: He might be. I never dealt with him. I never spoke with him as far as I know.

AK: Did you have anything to do with the negotiation for the subleasing for the two Grant stores located in Houston and another in Glendale, California?

MH: No, I did not.

AK: Do you know if Mr. Amms handled that?

MH: He was handling that area. I imagine it was part of his territory.

AK: Do you know whether or not Mr. Quinlan received any monies or any property from Mr. Waites or any of his associates?

MH: I'm not aware of that.

AK: Are you familiar with a law firm, Knowle, Middleton & Kraver?
MH: No.

AK: I show you a check #208 dated October 2nd, 1972 in the amount of \$2500 payable to Dan Quinlan from MidAmerica Development office account and looks like it's signed by John Waites. I ask you if



AK: you've seen the check before or know anything about it.

MH: I have not seen the check before and I know nothing about it.

AK: I have a copy of a letter from Mr. Charles Turner dated July 30, 1973 to Mr. Jack Christianson. It refers to Frontier Development Corporation. Do you know anything about a Frontier Development Corp?

MH: Never heard of it.

AK: Now, Mr. Haines, is there anything at all that you want to add by way of explanation, that you want to tell me to clarify that you think may be a misconception or anything about your dealings with Mr. Waites and his companies?

MH: Well, as far as I'm concerned, every deal I made with Mr. Waites was made on the merits of the deal. In fact some of the rent deals I made with Mr. Waites are the cheapest that the company is paying. Mayfield, Kentucky for one is \$1.15 a sq.ft. when we were paying \$1.50. And all the other deals were at the going rate or below and the locations were picked on their merit and for no other reason. In fact, when I started working for Mr. Waites in Atlanta, when he tied up with Arlen Realty and he was in the habit of being in with the banks and financing people and out and Arlen funded him he had the ability to put the deals together at the time the company was looking to make a lot of deals. He got himself in trouble and I was in a commitment to kill about 6 or 7 of his deals because at that time wanted either to get out of him or - he was just unable to put them together and they were turned over to other developers or killed completely.

AK: Did you receive any type of renumeration at or about the times that each particular deal was consummated?

MH: No sir.

AK: Were any offers made to you by Mr. Waites?

MH: No sir.

AK: Or anybody in his employ?

MH: No sir.

AK: During the period of your most recent marriage, has your wife been employed?

MH: For a while?

AK: In what capacity?

MH: Well, numerous jobs. She was working temporary help, she was working World Trade Exposition in Chicago which was temporary work there.

AK: In any given year what was the highest amount that she earned?

MH: She hasn't had an income every year from herself. She has a portfolio of stocks from her mother's estate which brought in dividends alone 2 or 3 thousand dollars a year, plus whatever trading went on, but her income in any given year I don't think would be more than \$5 or \$6000.



AK: Do you own any stock?

MH: I have 300 shares of S

Associat.s.

AK: Did you own any additional stock during the last 3 or 4 years?

MH: Yes, but no significant amounts. 50 shares or maybe 100 shares. Most of the stock is in my wife's name.

AK: As you can see the company has uncovered some things which it finds disturbing and it's trying to get an explanation. I think you've been cooperative and I appreciate it. We want to pursue this a bit further and I would again ask your help.

MH: What other help can I offer?

AK: If you have any additional information which you think would help us tell us that. We'd like to be able to clear your name from this if that's possible. There's two things. One, give us any other information that you can. Two, give us authority to do further checking into you and your relationship with Mr. Waites and his companies. I think that would be the best way for you to help the company.

MH: We've gone through all the checks and as I said the --I'd tried to split it up for you - the \$30,000 was for the Mexican property and there was a loan. There was never any discussion or any payments for deals. I think you've asked all the pertinent questions that were involved in my dealings with Mr. Waites and just don't what there is to add. I can submit what papers I have to you on the Mexican property. I believe I do have bills and correspondence with Mr. Rosengran down there about the construction which I'll be very happy to submit.

AK: I'd like to see that. I'd like to see the promissory notes as well, if they're notes or a loan agreement, whatever it is. I also have prepared certain authorizations which I'd like you to sign which will permit us to make certain inquiries that we may not be able to check. I'll show them to you and if it's alright I'd like you to sign them.

Let me tell you what I have. I have a tax authorization, an authorization with regard to credit cards, department stores, Internal Revenue, financial documents and I'd like you to sign them.

TRANSCRIPTION OF MARK S. HAINES/ALLAN KIRSCHNER INTERVIEW-JANUARY 31, 1975

AK: This is Allan Kirschner at W.T. Grant, 1515 Broadway in the afternoon. Mr. Haines, will you identify yourself for us please?

MH: Mark S. Haines, Southern Regional Manager for the W.T. Grant Co.

AK: Do you understand that our conversation is being tape recorded? Is that correct?

MH: That is correct.

AK: And you have no objection to that, is that correct?

MH: No objection.

AK: You are doing this voluntarily?

MH: Yes, I am.

AK: No one has made any promises of any kind to you have they?

MH: No.

AK: Would you tell me something about yourself that you think no one other than yourself would know?

MH: What can I tell you?

AK: Your secretary; your number of children or something like that.

MH: Well, I have two children by a previous marriage. I have a new eight-month old child by a second marriage. Presently, I am going through a possible second divorce.

AK: We spoke this morning, is that correct?

MH: That is right.

AK: And our conversation was tape recorded at that time as well?

MH: That is correct.

AK: And that conversation was also recorded with your permission and consent, is that correct?

MH: That is correct.

AK: Okay. In August, 1972, you repaid a loan to W.T. Grant in the amount of \$33,000. Where did you get the funds to repay that loan?

MH: I sold the coop I was living in in Chicago. This is previous to moving to Atlanta and I used the proceeds from the sale of that coop to pay the loan. The purpose of the loan was to put a deposit on a house that I wanted to buy in Atlanta.



AK: Did you receive any portion of the funds used to pay that loan from Mr. Waites or any of his associates?

MH: No, I did not.

AK: Would you tell me what, if anything, you knew about Waites and his associates, his companies, and affiliates dealings with Mr. Christenson and Mr. Quenlin?

MH: All I know is that Mr. Waites was a friendly, outgoing individual and we dealt together in the real estate line as he did with Dan Quenlin out in Chicago as I did and he had met John Christenson through various inspections of real estate locations.

AK: Do you know of any dealings that they had regarding Mr. Christenson's horse barn or horses?

MH: No. All I knew was that they were communicating about it but I don't know anything else about it.

AK: Mr. Christenson or Mr. Waites never confided in you that there was a passage of money or property from Mr. Waites to Mr. Christenson, is that correct?

MH: Absolutely not.

AK: Now, is it correct that in someperiod of time, Mr. Waites stated or boasted that he had you in his hip pocket?

MH: This is what was rumored. It got back to me through . . I forgot what source and I approached Mr. Waites on it and of course, he denied it. As I stated before, I told Mr. Waites, each deal had a stand on its own. Just because he was John Waites, doesn't mean that every deal was his.

AK: Do you know to whom Mr. Waites had made statements to the effect that he had you in his hip pocket or back pocket?

MH: No, I do not.

AK: Do you know if he made such statements about any other employee of Grant's?

MH: Not to my knowledge.

AK: Would you describe for me again the financial transactions that you had with Mr. Waites and his companies and how this financial transaction came about?

MH: Well, the initial one, as I stated, was I approached Mr. Waites when I was having a personal problem with my divorce and needed money for a settlement.

AK: What prompted you to approach Mr. Waites?

MH: At that point, I thought I was friendly with Mr. Waites and I thought he was in a position to be able to help me out and I guess I had no one else to turn to at that point. That was

the initial. The other, \$3,000 checks, ten of them or 11, I don't know what it was, was involved with the property in Mexico that I was building and he was helping so that he could have use of it when it was completed.

AK: Who had title to that house?

MH: The Mexican Government. I had control over the title but there was actually no deeds to property on that coast of Mexico.

AK: You say you controlled it. Was there something in the form of a deed or something in the form of a lease?

MH: It is a government document registered down there. Mr. Waites was not listed on that document. I had started construction on the house before any of those payments were made to me.

AK: And how did it come about that Mr. Waites made these payments?

MH: He visited me when I was down on vacation down in Puerto Biarda for a day or two and was impressed by the town and I don't know the exact wording or how it came about but he showed some interest in getting involved with it and helping me out and to use the property some time in the future when it was completed.

AK: And how did you work out financial arrangements?

MH: I do believe that it was worked out that he would . . . no set figure was determined upon but it just worked out that it was averaging as you can see about \$3,000 a month for a period of about ten or eleven months.

AK: You will verify that these are the checks that I showed you in this morning's session?

MH: That is correct.

AK: What was the total amount that you paid for that property?

MH: The property itself was about \$4,000 . . .

AK: That's the land?

MH: That's the land, but then there was the construction of it which I had borrowed from the bank and I had \$10,000 of my mother's money in the project plus my bonus money from the Grant Company. I had a good deal sunk in it.

AK: From what bank did you borrow?

MH: First National Bank of Atlanta. I used my wife's stock for collateral.

AK: You repaid that loan?

MH: Yes. Some of those \$3,000 checks went to pay the loan.

AK: I see. Are you telling me that you received the . . . after you bought the property, you received the \$3,000 checks and you used those checks to make improvements on the property as well as to repay the loan that you had?

MH: Right. The loan was originally what I had in it to start constructions plus the \$10,000 plus other monies.

AK: How much money did you actually pay towards the construction of the house in Mexico?

MH: Myself?

AK: Yes.

MH: Or in total?

AK: By yourself.

MH: I would say about \$20,000.

AK: And where did you get that \$20,000?

MH: As I said, \$10,000 from my mother and . . I guess it was more. I had a bank loan for I think \$14,000, I used some of my bonus money. My wife sold some stock to add to it.

AK: How much of Mr. Waites' money was used towards the development of the house?

MH: I would say most of it. The \$30,000. I can't deny that it all went through my checking account. I'm sure I spent some of the money on other things. I would think most of it filtered into Mexico. A majority.

AK: How much of the \$30,000 or \$33,000 would you say went to repay the loan that you had previously taken from the First National Bank in Atlanta?

MH: Half.

AK: Did Mr. Waites know that you were doing it?

MH: I believe so.

AK: What would your estimate be of the total amount of money that was put into the construction of the property in addition to the initial \$4,000 payment that you made?

MH: Well, I would say in the neighborhood of maybe \$50,000.

AK: What became of that property?

MH: I sold it last year.

AK: 1974?

MH: Yes.

AK: And what did you receive?

MH: \$36,500 for the house and another \$11,000 for the adjoining piece of property.

AK: And is it correct that you have not given any of the funds that you received from the sale of the property or the adjoining piece of property to Mr. Waites?

MH: That is correct.

AK: Does he know that the property was sold?
MH: I am not sure that he does.

AK: When was the last time that he came to visit you in Mexico?
MH: I think it was 1972.

AK: To your knowledge, did he go to the house in Puerto Biarda at any time that you were not there?
MH: Not to my knowledge.

AK: Was the house ever completed?
MH: No. The house was never completed until after it was sold.

AK: Did you ever live in it?
MH: No.

AK: It was uninhabitable?
MH: It was uninhabitable.

AK: Was Mr. Waites . . .
MH: It was a folly.

AK: Why was that?
MH: Well, because building 3,000 miles away even though you had someone next door in a foreign country is something that I estimated would run me \$25,000 total. You see what went in it. It was a complete disaster.

AK: The person next door that you were talking about is Mr. Rosengram?
MH: That's correct.

AK: He did the contract?
MH: Well, he tried.

AK: Did you ever intend to repay the \$30,000 or \$33,000 that Mr. Waites gave you for use in the house in Puerto Biarda?
MH: The intention was to . . . I actually held onto the money at this point because of this marital problem right now, which is probably going to wipe out anything I have left of it.

AK: Did Mr. Waites ever ask you for repayment?
MH: No.

AK: That's true of the \$15,000 that he gave you in connection with the divorce of your first wife?
MH: That's correct.



AK: What about that other \$5,000 that you told me belonged to Mr. Rosengram?

MH: He hasn't asked for that either but I have been attempting to try and get it back to him.

AK: For him from Mr. Rosengram?

MH: No. I haven't talked to him. Mr. Rosengram, as I said, is hopefully going to settle this stated problem and I told him to make sure that if it is settled, to send John a check.

AK: Why did you approach Mr. Waites for the \$5,000 for Mr. Rosengram?

MH: He had met Mr. Rosengram when we were in Mexico and I saw that he was overseeing. Mr. Rosengram was in a financial bind and he asked me if I would approach John on his behalf, which I did. If I could discuss that matter that you showed me . .

AK: On the tape?

MH: Yeah, we are talking about monies and you are talking about . . I think the question is whether I represented to the best of my ability Grant Company.

AK: Yes, that is one of the questions.

MH: That's what the whole thing is about.

AK: And you maintained and have done so since this morning when we first spoke that throughout all of this, that you did represent as best as you could.

MH: This is the way I see it in the memo that you showed me.

AK: I am referring to a John W. Waites memo dated June 26, 1973, is that correct?

MH: That's correct.

AK: Will you identify some of the people. It's on . . it says John W. Waites, President and it is on Centurion Development Corp. stationery, is that correct?

MH: That's correct.

AK: Now, who are the people that this is to?

MH: Charles Levowitz is President of Arion Reality; Harold Still and John . . is a party who works for them. I don't know his position . . John Ford is there house counsellor, I believe. It's a memo regarding . . Mr. Waites wrote to these people and I guess the important point that he submitted locations in North and South Carolina that they felt should be considered by Grants and also getting towns on record in my office to eliminate competition for these towns and as I discussed before the tape went on, I never did make a deal in North or South Carolina with Mr. Waites and two of the locations that he submitted to eliminate competition, I made with his competition and that was Niceville, Florida and Mariana, Florida and there were some others, which I cannot remember at this particular time.

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AK: Did you receive anything from any of those other companies which you described as Mr. Waites competition in the form of payments?

MH: Absolutely not.

AK: Did you ever have any business dealings with people from these other companies similar to your dealings that . . with Mr. Waites?

MH: No.

AK: Is there anything else that you said before the tape went on, because we spoke on about five minutes this afternoon before the tape went on, is there anything else that you said that has not been covered so far on the tape?

MH: I don't think so. I just wanted to make it clear that a lot of allegations have been made. Looking back, I was a fool and I guess I used Mr. Waites but at no time did I give the Grant Co. a raw deal. I made the best possible real estate deal I could.

AK: At the same time, trying to make a good deal for yourself, I suppose?

MH: Well, looking back, I guess you're right.

AK: When you say that you are a fool, what do you mean by that?

MH: Well, I looked to Mr. Waites as a friend at that time and you know, all of it was on Waites transaction and yet, he was building shopping centers for the Grant Co. Now, you only know as an individual what goes on in your mind. In my mind, I would not make a bad deal just for the fact that he was involved with my house in Mexico and paid for my divorce. The deal made sense, and it could be put together and, in my opinion, would be profitable for the Grant Co. that's fine. The records will show that there are many locations that he submitted that were turned down.

AK: So, you feel that although you were having these transactions with him and they involved substantial amounts of money, they did not influence you?

MH: That's correct.

AK: That is your belief?

MH: That is my belief.

AK: Would you explain again . . your dealings with Mr. Waites and his companies in so far as they related to the use of automobiles that were owned by Mr. Waites and his companies?

MH: Well, after my first divorce, I left with nothing except my clothes; I had no car. At that point, I think is when Mr. Waites offered for me to get a used car off his brother's used car lot and use it until I got back on my feet. That's what happened with the Cougar.



AK: When was that?

MH: Well, that was after my first divorce, I guess 1969 or 1970.

AK: And that was a 1967 or 1968 Cougar?

MH: It was a 1967 Cougar.

AK: And you used that car for how long?

MH: I guess I used it for the time I was in Chicago; for the next two or three years and then when I was transferred, I returned the Cougar and he gave me use of the Pontiac station wagon.

AK: Where was this?

MH: This was in Louisville. And then there was a question about the El Dorado, which was supposedly . . belonged to his son. I knew nothing about it. I knew he had a white convertible, which he drove around; there was a blue El Dorado that he said no one was using and I used that for approximately a period of two months.

AK: Who used that car before you?

MH: Dan Quenlin. He had it for a short period of time. He gave it to me when he was transferred to Chicago. He said that John said that you could use it as my car. Before that, I was driving a 1965 Chevy, which belonged to a friend of mine in Atlanta because my car was in the shop and it was having problems that would not be solved for three or four months so I was out of a car.

AK: How did you receive delivery of these automobiles that belonged to Mr. Waites or his companies?

MH: Well, the Cougar I picked up off a lot of Jim Waites'; the Pontiac I think was the same way; and the El Dorado Dan gave me the keys when he left for Chicago.

AK: Do you know if Mr. Waites has an interest in his brother's used car lot?

MH: I guess no.

AK: He never made any statements to that effect?

MH: Come to think about it, he might have mentioned that he lent his brother part of it or he owned part of it. Whether it is true or not, I don't know.

AK: Would you tell me what the Blue Eagle property is?

MH: It's a development company in Atlanta.

AK: And who owns that company?

MH: Eugene Stone.



AK: Do you have any dealings with him?
MH: As far as shopping center deals?

AK: Yes.
MH: No. He owns three centers of ours, two of which are in foreclosure.

AK: Eugene Stone?
MH: Yes. They were made by Loss Molet, who is my predecessor in Atlanta. Gene Stone and I play tennis and that was his car that I was using.

AK: Oh, I see. That was the Chevrolet?
MH: Yes.

AK: Do you know the reason that Mr. Waites stopped sending the \$3,000 checks to you?

MH: Well, it got to the point where, I think we discussed this . . . you know, I couldn't make it. I mean, the cost, every day we're going up. Inflation hit down there. My bonus was cut from \$17,500 one year down to \$5,000 the following year. I couldn't put up any more money and I thought we were just throwing money away.

AK: I am going to stop the tape now with your permission and we will resume in just a minute, okay? (pause) I just put the tape back on. We didn't have any conversation while the tape was off, is that correct?

MH: That is correct.

AK: Do you recall what you were saying?
MH: You asked me why the payments stopped?

AK: Yeah.
MH: I said because the project had stopped. It was getting out of hand and there was no end in sight and that is why it stopped.

AK: During any of the times that Mr. Waites was forwarding \$3,000 checks to you on a monthly basis, did there ever come a time when he did not forward any checks and you would call and ask him for them?

MH: I don't think so.

AK: He just sent them regularly?
MH: They would come in about once a month.

AK: Okay, is there anything that you would like to add concerning your dealings with Mr. Waites, his companies or any of the other companies and developers that you dealt with while you were with Grants?



MH: Just the fact that it's all a matter of record -- what shopping center deals I made with Mr. Waites and where they are and what the rents are and up to this past year, the profit situation was one of them. I hope that someone will realize that it was in the best interest of the company.

AK: Do you realize now that it was improper for you to receive payments from Mr. Waites?

MH: I would say it was a funny kind of deal.

AK: Do you realize that, at least ostensibly, he had an interest that was adverse to W.T. Grant?

MH: I don't believe how we can use it. . .

AK: But he had such an interest. In other words, he was interested in obtaining deals?

MH: Yes, he was interested in deals and he always thought that he could get any deal he wanted and it's a matter of record that he couldn't.

AK: Do you know what types of arrangements or deals Mr. Waites made with Arlen Shopping Centers?

MH: Yes, I had a meeting with Charles Lebowitz, President of Arlen, and we were talking about a number of deals that I had made with John in the South and how unprofitable they were for Arlen. I think each deal had either zero or negative cash profit so they were not profitable deals with Mr. Waites or Arlen. Their deal was they were funding, if I remember correctly, \$48,000 a night to go out and to make deals with the Grant Co. and then build it and give Arlen 50% of the deal. I think that was the arrangement and the point I made with Charles Lebowitz. . . he was saying that John had only put together about three deals and a possible eight or ten that he had promised them and that they were in the hole with him to the tune of \$720,000 and they didn't know how to get out and they wanted to know what the scoop was and I said that John at that time was not paying attention to business. He was jumping from here to there and never paid attention to one deal at a time and they were not getting billed and they were not profitable. So they ended their relationship at that point with Waites and made some deal to take over one or two of the centers that he had built, I guess, and tried to reap their money out of there.

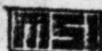
AK: When was that? When did that occur?

MH: I would say about a year ago. I am sure you can confirm that. . . when it happened, with Mr. Lebowitz or anybody at Arlen.

AK: Was anybody at Arlen aware of the fact that Mr. Waites and his companies was giving you the money that we were talking about?

MH: It is possible. I don't know.

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AK: No one has ever told you that . . .
MH: No one has ever told me that.

AK: You haven't heard rumors to that effect, have you?
MH: No, I have not.

AK: Did you ever see any monies from Arlen's or anyone at Arlen's?
MH: No.

AK: Did anyone ever offer you?
MH: No.

AK: I'll ask you a general question with regard to the other real estate developers as well that you dealt with. Did any of those developers or anyone working for them make any offers to you to give you any gifts, gratuities of any type, cash, bonuses, charge accounts, credit cards, vacations -- anything?

MH: I would say in the ten years, yes. There have probably been four or five who would put it where if you get this location approved, there's something in it for you.

AK: Who would that be?

MH: I remember one in particular -- a gentleman by the name of Charles Leiber. He was a broker in Columbus, Ohio regarding some deal north of Columbus, which was never made.

AK: When was that?

MH: That was when I was first out west. I guess about 1960, 1968.

AK: Any others?

MH: Nothing specific that I . . . I am sure . . . I know there were instances, but I can't remember. The problem with the basic Grant Shopping Center in most cases is, at the bottom line when you're all finished with a \$1,000,000, \$2,000,000 center as it happened in the case of John Waites, you wind up with zero cash flow or negative cash flow. Our rates are the cheapest in the industry and everybody knows that it's a tough road to hoe.

AK: Grant's is sort of the attraction of the shopping center.
MH: It used to be.

AK: Yeah.

MH: But we would not pay in most cases over \$2.00 a square foot for any location. Interest rates went up and construction rates went up. A very tough deal to put together. And the way it works is when all of this was going on, the Grant Co. wanted a lot of locations and we busted our ass to get them and you had to deal with people like I dealt with John in Kentucky because he knew that Kentucky was . . . from there and he could deliver the towns that we wanted in Kentucky. Like I dealt with people in Ohio and Michigan, Wisconsin, Indiana, Illinois - all of these

states to cover. We tried to do business with people who could deliver so we didn't have to worry about it. Once I saw that John Waites couldn't deliver, he was not given any more deals. As it was true with other developers also.

AK: Do you know what the purpose for Mr. Waites having different corporate names?

MH: I have no idea.

AK: Would you just list the names that you are aware of of Mr. Waites organizations?

MH: John Waites and Associates; Centurion Developing Company - those are the only two that I know.

AK: Do you know a J.W.W. Inc.?

MH: Yeah, I've heard of that and Mid American Construction, is it?

AK: Mid American Construction and Construction Development Co. of America I think is another one, is that correct?

MH: Well that's correct. I don't remember that because I saw it on the check this morning. But the two I was most familiar with was John Waites and Associates and Centurion.

AK: Did Mr. Waites ever tell you the reason the checks came to you from the Mid American account?

MH: No.

AK: Would you tell me again about the trips you took with Mr. Waites - who accompanied you and who paid for these trips, when they were, as best as you can recall?

MH: Well, one trip was on his private plane to St. Thomas with my wife and myself.

AK: Your present wife?

MH: My present wife. John and his wife arrived a day or so later. He paid for the whole job and I would say the air transportation was over five . .

AK: You came down on his plane without him?

MH: That's correct.

AK: And then the plane went back and picked him up?

MH: No, he came down commercial. Then he came back from Puerto Rico.

AK: ~~Is~~ that is when you said you stayed at Tramboyi?

MH: That's correct. There was a trip to Mexico City, which I had planned with my wife and he wasn't planning on going along until the last minute, when he wanted to join in.

AK: That was the time of the Olympics?

MH: Olympics, 1968 and he paid for some of the hotels down there but



I made all of the arrangements with my wife as far as the tickets.

AK: And he picked up the tab once you were there, right?
MH: And some of it was prepaid.

AK: To the extent that it was not prepaid, he picked up, is that correct?
MH: That's correct.

AK: Any others - trips to Florida?
MH: Well, there were some trips to Florida but we were there discussing business and those two trips that I just related were strictly pleasure.

AK: And the others were a mixture of business and pleasure?
MH: Yes.

AK: And on these trips, that were mixture of business and pleasure, I assume that Mr. Waites picked up the tab - the entire tab?
MH: No. There were times where if I was down there working, I would pay for my own hotel and put it on my expense account and finally be picked up the dinner and the drinks.

AK: Is there anything that is going on, that has gone on in the company that you know about - Grant - in connection with Grant business and real estate that you think should come to the attention of Grant?

MH: No.

AK: This morning, you gave me a list of your banks. Have you anything to add to that or did you give me the complete list of your banks during the past three or four years?

MH: The list . . what, where I have bank accounts?

AK: Yes.

MH: You did say the last three or four years?

AK: I think Mr. Kelly may have asked you . . may have interjected that point.

MH: I gave you the First Nacional Bank of Atlanta.

AK: The First Georgia Bank, right?

MH: That's correct. I mentioned the Madison Bank in Chicago. The Trust Company Bank in Atlanta.

AK: The Trust Company?

MH: The Trust Company. That's closed now but I did have an account there.

AK: Any others? That includes checking and savings accounts?

MH: That's correct.



MH: The Savings and Loan. I had a savings account in, which is now closed and I am trying to think of the name of it. I think it is the First Federal Savings and Loan.

AK: Where's that?

MH: It's a superb of Vermont. That's where you can trace the \$33,000 repayment to. When I sold the house, I opened up a savings account in Malibu. The sales price was under \$60,000 (next few words inaudible).

AK: Mr. Haines, if you had to do it again . . .

MH: I have been asked this before and the answer is no, I would not do it again.

AK: You would not take the payments that you received?

MH: That is correct. I still feel in my mind I did the best job I could to make this real estate deal and make a profit for The Grant Co.

AK: I haven't any other questions to ask. Do you have anything else you wish to add?

MH: No, I do not.

AK: It is now about five minutes to three by my watch and we will end the tape at this point, okay?

MH: Okay.

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK

W. T. GRANT COMPANY,

Plaintiff,

-against-

JOHN A. CHRISTENSEN, MAVIS CHRISTENSEN,
MARK S. HAINES, DANIEL QUINLAN, JOHN W.
WAITS, JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWA, INC.,
CENTURION DEVELOPMENT CORPORATION,
CENTURION OF LOUISIANA, INC., MID-AMERICA
DEVELOPMENT DEVELOPMENT CORPORATION OF
MID-AMERICA, INC., UMBAUGH FOLE BUILDING
COMPANY, INC., also known as UMBAUGH CO.,
FRONTIER DEVELOPMENT CORPORATION,
JOHN DOES I THROUGH X, the names being
fictitious, the true names of said
defendants being unknown to plaintiff
at the present time,

CIVIL ACTION FILE NO 25 Civ 471
(CLB)

SUMMONS

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

LIEBMAN, EULAU, ROBINSON & PERLMAN

plaintiff's attorney , whose address

32 East 57th Street, New York, New York

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

by Richard F. Burghart
Clerk of Court

by E.A. Becker
Deputy Clerk

Date: January 31, 1975

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

W. T. GRANT COMPANY, :

Plaintiff, :

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWW,
INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF LOUISIANA,
INC., MID-AMERICA DEVELOPMENT,
DEVELOPMENT CORPORATION OF MID-
AMERICA, INC., UMBAUGH POLE BUILDING
COMPANY, INC., also known as
UMBAUGH CO., FRONTIER DEVELOPMENT
CORPORATION, JOHN DOES I THROUGH
X, the names being fictitious, the
true names of said defendants
being unknown to plaintiff at the
present time,

COMPLAINT

Defendants. :

-----X

Plaintiff, W. T. Grant Company, by its attorneys Liebman, Eulau, Robinson & Perlman, for its complaint herein alleges:

Jurisdiction and Venue

1. This action for treble damages arises under (A) §4 of the Clayton Act (15 U.S.C. §15) by reason of defendants' violation of §1 of the Sherman Act (15 U.S.C. §1), and (B) principles of common law. The jurisdiction of this Court with respect to plaintiff's common law causes of action is based upon (A) diversity of citizenship (28 U.S.C. §1332), and (B) principles of pendent jurisdiction. The matter in controversy on these causes of action based upon diversity of citizenship exceeds, exclusive of interest and costs, the sum of \$10,000.

2. Many of the acts and transactions complained of in the complaint occurred within the Southern District of New York. Defendants did business with plaintiff in connection with many of the acts and transactions complained of in the complaint within such district.

Citizenship

3. Plaintiff W. T. Grant Company (hereinafter "Grant" or "plaintiff") is a Delaware corporation, having its principal place of business at 1515 Broadway, New York, New York, and has been continuously engaged since 1906 in the business of operating retail stores, selling apparel, dry goods and related items, and providing services in support of such retail stores.

Many of plaintiff's retail stores are located in shopping centers wherein plaintiff, as lessee, rents its stores from a shopping center developer or other lessor.

4. Upon information and belief John A. Christensen (hereinafter "Christensen") is a resident of the State of Connecticut. At all times hereinafter mentioned, Christensen was employed by plaintiff in various capacities as a Real Estate Manager and since 1973 as Real Estate Vice President.

5. Upon information and belief, defendant Mavis Christensen is a resident of the State of Connecticut, and knew of, participated in and benefited by the wrongful acts of Christensen as set forth in the complaint.

6. Upon information and belief defendant Mark S. Haines (hereinafter "Haines") is a resident of the State of Georgia. At all times hereinafter mentioned Haines was employed by plaintiff as a Real Estate Manager.

7. Upon information and belief defendant Daniel Quinlan (hereinafter "Quinlan") is a resident of the State of Texas. At all times hereinafter mentioned Quinlan was employed by plaintiff as a Real Estate Manager.

8. Upon information and belief John W. Waits (hereinafter "Waits") is a resident of the State of Kentucky. Upon information and belief at all times hereinafter mentioned Waits was the principal officer, stockholder, member or controlling person of defendants, John W. Waits, d/b/a John W. Waits

Associates (hereinafter "JWWA"), JWW, Inc. (hereinafter "JWWI") Centurion Development Corporation (hereinafter "Centurion"), Centurion of Louisiana, Inc., (hereinafter "COL"), Mid-America Development (hereinafter "MAD"), Development Corporation of Mid-America, Inc. (hereinafter "Development") and Frontier Development Corporation (hereinafter "Frontier").

9. Upon information and belief, defendant JWWI is a corporation duly organized and existing under the laws of the State of Kentucky.

10. Upon information and belief, Centurion is a corporation duly organized and existing under the laws of the State of Kentucky.

11. Upon information and belief COL is a corporation duly organized and existing under the laws of the State of Louisiana.

12. Upon information and belief, defendant MAD is a corporation duly organized and existing under the laws of the State of Kentucky.

13. Upon information and belief, defendant Umbaugh Pole Building Company, Inc., also known as Umbaugh Co., (hereinafter "Umbaugh") is a corporation duly organized and existing under the laws of the State of New York.

14. Upon information and belief, defendant Development Corporation of Mid-America, Inc. (hereinafter "Development") is

a corporation duly organized and existing under the laws of the State of Kentucky.

15. Upon information and belief, Frontier is a corporation duly organized and existing under the laws of the State of Kentucky.

16. JWWA, JWBI, Centurion, COL, MAD, Umbaugh, Development, and Frontier, are sometimes collectively referred to as the "corporate defendants".

17. The corporate defendants, with the exception of Umbaugh, and Waits are, and at all pertinent times have been, engaged in the business throughout the United States of developing and constructing shopping centers, including the doing of all things necessary thereto, including but not limited to the acquisition of land, and the construction of structures and improvements on such land.

Interstate and Foreign Commerce

18. The dealings and transactions alleged in this complaint involved and affected interstate commerce.

Allegations Common To All Counts

19. At all pertinent times Christensen, Haines and Quinlan (hereinafter sometimes collectively referred to as the "employee defendants") were employed by plaintiff in connection with the negotiation and approval of leases for stores located or to be located in shopping centers and elsewhere.

20. Plaintiff entrusted the employee defendants and each of them with the responsibility for negotiating and approving leases for such stores upon terms most favorable to plaintiff with respect to price, location and other terms of such leases and entrusted them with responsibility for negotiating, recommending, approving and certifying to plaintiff the desirability of entering into such leases negotiated and approved by them on behalf of plaintiff.

21. In connection with the employee defendants' duties throughout the period of their employment, the employee defendants negotiated and approved leases with Waits, the corporate defendants, various corporations under Waits' domination and control, and other corporations and entities including others with which he was affiliated and, upon information and belief, with defendants John Does I to X.

22. The employee defendants, in their capacity as employees of plaintiff, were under a fiduciary duty to render exclusive, honest, faithful and loyal service to plaintiff and to execute the duties of their positions solely with regard to plaintiff's rights and interests.

23. At the time that the employee defendants entered into plaintiff's employ and continuously thereafter, the employee defendants represented to plaintiff that, for the salary and other compensation paid and credited to the employee defendants

by plaintiff, they would perform their duties as fiduciaries and would render to plaintiff their exclusive, honest, faithful and loyal services and would execute the duties of their positions solely with regard to plaintiff's rights and interests.

24. Plaintiff relied upon all of the employee defendants' aforesaid representations as well as the fiduciary duties they owed to plaintiff, and acting in reliance thereon, plaintiff appointed Christensen Real Estate Vice President and employed and authorized all the employee defendants to negotiate and approve leases for plaintiff's stores located in, or to be located in, shopping centers and other locations throughout the United States.

25. The employee defendants were authorized and entrusted by plaintiff to, and they actually did, negotiate and approve leases for plaintiff's stores located in, or to be located in shopping centers and other locations throughout the United States.

26. Plaintiff leased stores which were negotiated and approved by the employee defendants located in, or to be located in, shopping centers and other locations throughout the United States, solely for use and operation in connection with the business and affairs of the plaintiff and for its sole benefit.

27. The employee defendants knew, when they made the aforesaid representations set forth in ¶23 supra, that said representations were false and untrue and said employee defendants continuously made and reiterated the same representations with intent to deceive and defraud plaintiff.

28. Upon information and belief, at all times alleged in the complaint, Waits, the corporate defendants, and defendants John Does I to X knew that the employee defendants were so employed and owed such fiduciary duty to plaintiff.

29. Instead of intending to render, and rendering to plaintiff their exclusive honest and loyal services, and instead of intending to execute, and executing their positions with sole regard to plaintiff's rights and interests, the employee defendants during the said period of their employment by plaintiff, without the knowledge or consent of plaintiff, fraudulently, furtively, wrongfully, maliciously and secretly, and controlled by their own personal interests and desire for secret gains and with intent to deceive and defraud the plaintiff: (A) appropriated and diverted to themselves profits including secret payments to the employee defendants in the nature of commissions, bribes, kickbacks, gifts, gratuities, bonuses and the like type of payments and monies belonging to the plaintiff; (B) appropriated and diverted corporate and business opportunities from plaintiff to themselves and to

others, including, but not limited to, the corporate defendants including defendants John Does I through X; (C) caused plaintiff to execute leases for stores located in, or to be located in, whopping centers throughout the United States which were not in plaintiff's best interests and were not the result of good faith arms-length negotiations; (D) used personnel and services belonging to the plaintiff for their own use, profit and benefit and appropriated plaintiff's property thereby; and (E) obtained for themselves and improved property in violation of their fiduciary duties.

30. Upon information and belief, at all times herein-after mentioned, all of the defendants conspired together and maliciously and wrongfully entered into a scheme to defraud and deceive plaintiff and to deprive it of money and property and did defraud and deceive plaintiff and deprive it of its money and property through the deliberate design and purpose of paying secret payments to the employee defendants in the nature of commissions, bribes, kickbacks, gifts, gratuities, bonuses and the like type of payments in values and amounts unknown to plaintiff at the present time, but upon information and belief, exceeding the sum of \$1,000,000.

31. Upon information and belief, in pursuance of said conspiracy and scheme, all of the defendants, did the acts and things alleged in the complaint and all such acts were participated in and done by all of the said defendants, or by

one or more of them, as steps in the conspiracy and for the purpose of defrauding and deceiving plaintiff and depriving plaintiff of its money and property as alleged in the complaint.

32. Upon information and belief Waits, the corporate defendants and defendants John Does I through X knowingly, wilfully and maliciously caused or induced plaintiff to enter into leases with them by systematically defrauding plaintiff and by inducing the employee defendants to breach their respective fiduciary duties by making secret payments to them which all of them in turn fraudulently concealed from and failed to disclose to plaintiff, the effect of which was to cause plaintiff to enter into leases at unreasonably high rentals, in locations that were calculated to advance the private interests of all defendants, and on other unfavorable terms rather than to advance the business of plaintiff.

33. Upon information and belief Waits, the corporate defendants and defendants John Does I through X secretly paid or caused to be paid to the employee defendants bribes, commissions, gifts, gratuities, bonuses and other compensation in connection with agreements for making of leases, the amounts of which are unknown to plaintiff but which exceed the sum of \$1,000,000.

34. By reason of the foregoing, the rentals charged by Waits, the corporate defendants and John Does I through X for said leases were loaded and increased by at least the amounts of said payments made to the employee defendants as well as by additional loaded and excessive payments, and plaintiff was caused to enter leases in various locations, at excessive rentals, that it would not otherwise have effected had such secret payments and bribes not been made. Such payments constituted a load and overcharge to plaintiff for said rentals.

35. Upon information and belief, all of the defendants, combined and conspired together to conceal, and in collusion with each other, did conceal from plaintiff the acts complained of in the complaint. Through such corrupt and fraudulent means, all said defendants induced plaintiff to enter said leases which leases were not arrived at though normal arms-length bargaining but were entered through the corruption of plaintiff's trusted employees.

36. Upon information and belief, the acts set forth in the complaint were done with the intent that they be relied and acted upon by plaintiff and they were so relied and acted upon by plaintiff in entering into such leases, to plaintiff's damage.

37. Plaintiff had no knowledge prior to on or about January 20, 1975 of the existence of the wrongful acts, transactions, and occurrences set forth in this complaint, and of the existence of the secret payments and bribes alleged in this complaint, all of which were deliberately and fraudulently concealed from the plaintiff by all of the defendants.

38. Plaintiff did not discover the existence and the extent of the crimes, frauds and breaches of fiduciary duty perpetrated upon plaintiff by all of the defendants as alleged in this complaint until on or about January 20, 1975.

FIRST COUNT AGAINST
ALL DEFENDANTS

39. All defendants acted in concert and in unlawful combination and conspiracy in restraint of trade, pursuant to a common scheme and plan designed to make, and they did actually make, plaintiff their captive lessee by eliminating competitive leasing opportunities and by freezing out other prospective lessors with the purpose and intent of, and in fact succeeding in, significantly raising the rents of property leased by plaintiff and causing plaintiff to execute leases for stores located in, or to be located in, shopping centers or elsewhere, which plaintiff would not have executed had said defendants not committed the wrongful acts set forth in this complaint.

40. Said defendants carried out and implemented said unlawful combination and conspiracy by paying or accepting bribes, or by committing the other wrongful acts set forth in this complaint.

41. The prices thereby paid by plaintiff to the corporate defendants, Waits and defendants John Does I through X were substantially and artificially inflated by reason of all defendants' illegal combination and conspiracy, and had the effect of reducing competition and raising the prices thus paid by plaintiff to insure to said co-conspirators the circuitous and surreptitious return of their bribes, all to plaintiff's damage.

42. Upon information and belief, the acts of all defendants above complained of, were committed in violation of §1 of the Sherman Act and were done and will be done for the purpose of restraining trade, making plaintiff a captive lessee of the corporate defendants, Waits and John Does I through X and for the purpose of raising rentals paid by plaintiff to such defendants and such persons and companies.

43. As a result of the corporate defendants' violation of §1 of the Sherman Act, plaintiff has been and will continue to be damaged in the sum of at least \$5,000,000.

44. Under the antitrust laws of the United States, plaintiff is entitled to recover three times the amount of said damages to wit, \$15,000,000.

COUNT TWO AGAINST
ALL DEFENDANTS

45. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbers 39 through 42 of this complaint as though fully set forth.

46. Upon information and belief, the acts of all defendants were committed in violation of §340 of the General Business Law of the State of New York and in violation of the laws of other jurisdictions, and were done and will be done for the purpose of restraining trade, making plaintiff a captive lessee of the corporate defendants, Waits and John Does I through X.

47. As a result of said defendants' violation of §340 of the General Business Law of the State of New York and the violation of the laws of other jurisdictions plaintiff has been and will continue to be damaged in the sum of at least \$5,000,000.

COUNT THREE AGAINST
ALL DEFENDANTS

48. Plaintiff repeats and realleges each and every allegation contained in paragraphs 39 through 42 of this complaint as though fully set forth.

49. By reason of the foregoing, all defendants wrongfully, wilfully and fraudulently for the purpose and intent of damaging and destroying the trade and business of plaintiff and to restrain plaintiff in the free exercise of its trade and

business and to deprive plaintiff of its money and property for the personal gain and profit of said defendants, have committed acts of unfair competition and attempted to appropriate plaintiff's business and corporate opportunities, all without plaintiff's knowledge or consent.

50. Plaintiff has lost corporate and business opportunity and profits, in an amount not ascertainable at this time, but which is believed to exceed the sum of \$5,000,000.

51. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000 plus all penalties imposed by law, which have not been paid although duly demanded.

COUNT FOUR AGAINST
ALL DEFENDANTS

52. Plaintiff repeats and realleges each and every allegation contained in paragraphs 39 through 42, 46, 49 and 50 of this complaint as though fully set forth.

53. At all times hereinbefore mentioned, all defendants have fraudulently, wilfully, wrongfully, wantonly and maliciously conspired together and embarked on a course of conduct, the sole purpose of which is to unfairly compete with plaintiff and to destroy the business and property of plaintiff.

54. In the pursuit of such course of conduct, said defendants have appropriated to themselves plaintiff's business

and property, and all said defendants, or one or more of them, did the acts and things alleged in this complaint, and all such acts were participated in and done by all said defendants or one or more of them, for the sole purpose and intent of unfairly competing with plaintiff, destroying the business of plaintiff, restraining plaintiff in the full exercise of its trade and business and appropriating plaintiff's business and property for their own use and benefit.

55. By reason of the foregoing, there is due and owing from said defendants, jointly and severally, to plaintiff the sum of at least \$5,000,000, which has not been paid although duly demanded.

COUNT FIVE AGAINST
ALL DEFENDANTS

56. By reason of the foregoing, all of the defendants, received and hold in trust for plaintiff's use, benefit and account, the sum of at least \$5,000,000, which all of the defendants retained and still retain in violation of their fiduciary obligations and duties to plaintiff and there is now due and owing from said defendants jointly and severally to plaintiff, the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT SIX AGAINST
ALL DEFENDANTS

57. By reason of the foregoing, all defendants fraudulently deprived plaintiff of its money and property and

damaged plaintiff's business by committing the acts alleged in this complaint, including but not limited to permitting or inducing plaintiff to enter into leases for stores located in, or to be located in shopping centers and elsewhere in the United States and by approving and certifying to plaintiff leases and like documents with respect to stores located in, or to be located in shopping centers and elsewhere in the United States which leases and like documents failed to disclose the fact that the employee defendants negotiated such leases for stores located in, or to be located in shopping centers and elsewhere, at improper and fraudulent rentals and at improper and improvident locations.

58. By reason of the foregoing, plaintiff has been damaged in the amount of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000, which has not been paid although duly demanded.

COUNT SEVEN AGAINST
ALL DEFENDANTS

59. Upon information and belief, by reason of the foregoing fraudulent, wrongful, malicious and wanton acts all defendants or one or more of them, conspired together and maliciously and wilfully entered into a scheme to defraud and to deprive plaintiff of its money and property and to damage its

business by committing the acts alleged in this complaint, including but not limited to permitting or inducing plaintiff to enter into leases for stores located in, or to be located in shopping centers and elsewhere in the United States, and by approving and certifying to plaintiff leases and like type of documents with respect to stores located in, or to be located in shopping centers and elsewhere in the United States, which leases and like documents failed to disclose the fact that the employee defendants negotiated such leases for stores located in, or to be located in shopping centers and elsewhere, at improper and fraudulent rentals and at improper and improvident locations for the benefit of and on account of plaintiff.

60. Upon information and belief, in pursuit of said conspiracy and scheme, said defendants did the acts and things alleged in this complaint and all such acts were participated in and done by all said defendants or by one or more of them as steps in the conspiracy and for the purpose of defrauding and deceiving plaintiff and concealing such acts as alleged in this complaint.

61. In reliance upon the purported propriety of said leases and like documents, plaintiff, acting without knowledge of the fraud and conspiracy alleged in this complaint, executed leases for stores located in, or to be located in shopping centers and elsewhere without knowledge that it paid

excessive rentals for such leases and, without knowledge that it executed leases for locations that were not in its best interest but were in furtherance of the interests of said defendants.

62. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT EIGHT AGAINST
ALL DEFENDANTS

63. Upon information and belief, all defendants had and received monies as a result of the wrongful and fraudulent conduct of defendants as alleged in this complaint in an aggregate amount unknown to plaintiff, but upon information and belief, exceeding the sum of \$5,000,000.

64. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000, which has not been paid although duly demanded.

COUNT NINE AGAINST
ALL DEFENDANTS

65. Upon information and belief, at all times herein-before mentioned, all defendants conspired together and maliciously and wilfully entered into a scheme to have and

receive monies of plaintiff, in an aggregate amount unknown to plaintiff, but upon information and belief, exceeding the sum of \$5,000,000.

66. Upon information and belief, in pursuance of said conspiracy and scheme, said defendants or one or more of them did the acts and things alleged in this complaint, and all such acts were participated in and done by said defendants, or by one or more of them, as steps in the conspiracy and for the purpose of defrauding and deceiving plaintiff as alleged in this complaint.

67. By reason of the foregoing plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TEN AGAINST
CHRISTENSEN

68. During the period of Christensen's employment, plaintiff paid or credited to him salaries, other compensation and fringe benefits in the sum of at least \$613,407.00.

69. By reason of the foregoing, Christensen had and received from plaintiff, without consideration by reason of Christensen's wilful, wanton, and malicious fraud and breach of his fiduciary duties to plaintiff, said salary, other compensation and fringe benefits in the sum of at least \$613,407.00.

70. By reason of the foregoing, Christensen is indebted to plaintiff in the amount of at least \$613,407.00 and plaintiff has been damaged in the sum of at least \$613,407.00 and there is due and owing from Christensen to plaintiff the sum of at least \$613,407.00 which has not been paid although duly demanded.

COUNT ELEVEN AGAINST
HAINES

71. During the period of Haines' employment, plaintiff paid or credited to him salaries, other compensation and fringe benefits in the sum of at least \$232,681.00.

72. By reason of the foregoing, Haines had and received from plaintiff, without consideration by reason of Haines' wilful, wanton and malicious fraud and breach of his fiduciary duties to plaintiff, said salaries, other compensation and fringe benefits in the sum of at least \$232,681.00.

73. By reason of the foregoing, Haines is indebted to plaintiff in the amount of at least \$232,681.00 and plaintiff has been damaged in the sum of at least \$232,681.00 and there is due and owing from Haines to plaintiff the sum of at least \$232,681.00 which has not been paid although duly demanded.

COUNT TWELVE AGAINST
QUINLAN

74. During the period of Quinlan's employment, plaintiff paid or credited to him salaries, other compensation

and fringe benefits in the sum of at least \$96,540.00.

75. By reason of the foregoing, Quinlan had and received from plaintiff, without consideration by reason of Quinlan's wilful, wanton, and malicious fraud and breach of his fiduciary duties to plaintiff, said salaries, other compensation and fringe benefits in the sum of at least \$96,540.00.

76. By reason of the foregoing, Quinlan is indebted to plaintiff in the amount of at least \$96,540.00, and plaintiff has been damaged in the sum of at least \$96,540.00 and there is due and owing from Quinlan to plaintiff the sum of at least \$96,540.00, which has not been paid although duly demanded.

COUNT THIRTEEN AGAINST
ALL DEFENDANTS

77. At all times mentioned in this complaint, all defendants conspired together and maliciously and wilfully entered into a scheme to obtain from plaintiff salaries, other compensation and fringe benefits for the employee defendants without consideration by reason of said defendants' wilful, wanton and malicious fraud and conspiracy.

78. Upon information and belief, in pursuance of said conspiracy and scheme, said defendants or one or more of them, did the acts and things alleged in this complaint, and all such acts were participated in and done by said defendants, or by one or more of them, as steps in the conspiracy and for the purpose of defrauding and deceiving plaintiff as alleged in this complaint.

79. By reason of the foregoing, plaintiff has been damaged in the aggregate sum of at least \$5,000,000 and there is now due and owing from defendants, jointly and severally, to plaintiff the aggregate sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT FOURTEEN AGAINST
ALL DEFENDANTS

80. Upon information and belief, the acts committed by all defendants were in violation of §§155.05, 155.30, 155.35 165.15, 165.20, 175.05, 175.10, 180.00 and 180.05 of the Penal Law and the public policy of the State of New York.

81. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing from said defendants jointly and severally to the plaintiff the said sum of at least \$5,000,000, which has not been paid although duly demanded.

COUNT FIFTEEN AGAINST
ALL DEFENDANTS

82. Upon information and belief, at all times herein-before mentioned, all defendants conspired together and maliciously and wilfully entered into a scheme to violate §§155.05, 155.30, 155.35, 165.15, 165.20, 175.05, 175.10, 180.00 and 180.05 of the Penal Law and the public policy of the State of New York.

83. Upon information and belief, in pursuance of said conspiracy and scheme, said defendants did the acts and things alleged in this complaint, and all such acts were participated in

and done by said defendants, or by one or more of them, as steps in the conspiracy and for the purpose of defrauding and deceiving plaintiff as alleged in this complaint.

84. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing from said defendants, jointly and severally, to plaintiff, the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT SIXTEEN AGAINST
THE EMPLOYEE DEFENDANTS

85. By reason of the foregoing, the employee defendants each breached their contract of employment with plaintiff.

86. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing from the employee defendants, jointly and severally to plaintiff the sum of at least \$5,000,000.

COUNT SEVENTEEN AGAINST
THE CORPORATE DEFENDANTS,
WAITS AND DEFENDANTS JOHN
DOES I THROUGH X

87. By reason of the foregoing, the corporate defendants, Waits and defendants John Does I through X induced the employee defendants to breach their contracts of employment with plaintiff.

88. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000.

COUNT EIGHTEEN AGAINST
ALL DEFENDANTS

89. Upon information and belief, all defendants, conspired together and maliciously and wilfully entered into a scheme to breach the employee defendants' contracts of employment with plaintiff.

90. In pursuance of said conspiracy and scheme, said defendants, or one or more of them, did the acts and things alleged in this complaint, and all such acts were participated in and done by said defendants or by one or more of them, as steps in the conspiracy and for the purpose of breaching the employee defendants contracts of employment with plaintiff.

91. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT NINETEEN AGAINST
ALL DEFENDANTS EXCEPT
CHRISTENSEN

92. Upon information and belief, at all times mentioned in this complaint, all defendants had due notice and

knowledge of Christensen's contract of employment with plaintiff.

93. Notwithstanding the fact that said defendants had due notice and knowledge of the aforesaid contract of employment, said defendants wrongfully, knowingly, intentionally, maliciously, wantonly and without reasonable justification or excuse induced, persuaded and enticed Christensen to violate and breach said employment contract and Christensen's fiduciary duties to plaintiff.

94. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing, jointly and severally, from said defendants to plaintiff the sum of at least \$5,000,000, which has not been paid although duly demanded.

COUNT TWENTY AGAINST
ALL DEFENDANTS

95. Upon information and belief, at all times mentioned in this complaint, all defendants conspired together and wilfully, wantonly and maliciously entered into a scheme to induce the breach of Christensen's contract of employment with plaintiff.

96. In pursuance of said conspiracy and scheme, said defendants did the acts and things alleged in this complaint and all such acts were participated in and done by said defendants or by one or more of them, as steps in the conspiracy

and for the purpose of inducing the breach of Christensen's contract of employment with plaintiff.

97. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing, jointly and severally, from said defendants to plaintiff the sum of at least \$5,000,000, which has not been paid although duly demanded.

COUNT TWENTY-ONE AGAINST
ALL DEFENDANTS EXCFPT
HAINES

98. Upon information and belief, at all times mentioned in this complaint, all defendants had due notice and knowledge of Haines' contract of employment with plaintiff.

99. Notwithstanding the fact that said defendants had due notice and knowledge of the aforesaid contract of employment, said defendants wrongfully, knowingly, intentionally, maliciously, wantonly and without reasonable justification or excuse induced, persuaded and enticed Haines to violate and breach said employment contract with Haines' fiduciary duties to plaintiff.

100. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing, jointly and severally, from said defendants to plaintiff the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TWENTY-TWO AGAINST
ALL DEFENDANTS

101. At all times mentioned in this complaint, all defendants, conspired together and wilfully, wantonly and maliciously entered into a scheme to induce the breach of Haines' contract of employment with plaintiff.

102. In pursuance of said conspiracy and scheme, said defendants did the acts and things alleged in this complaint and all such acts were participated in and done by said defendants or by one or more of them, as steps in the conspiracy and for the purpose of inducing the breach of Haines' contract of employment with plaintiff.

103. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing, jointly and severally, from said defendants to plaintiff the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TWENTY-THREE AGAINST
ALL DEFENDANTS EXCEPT QUINLAN

104. Upon information and belief, at all times mentioned in this complaint, all defendants had due notice and knowledge of Quinlan's contract of employment with plaintiff.

105. Notwithstanding the fact that said defendants had due notice and knowledge of the aforesaid contract of employment, said defendants wrongfully, knowingly, intentionally,

maliciously, wantonly and without reasonable justification or excuse induced, persuaded and enticed Quinlan to violate and breach said employment contract and Quinlan's fiduciary duties to plaintiff.

106. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing, jointly and severally, from said defendants to plaintiff the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TWENTY-FOUR AGAINST
ALL DEFENDANTS

107. At all times mentioned in this complaint, all defendants conspired together and wilfully wantonly and maliciously entered into a scheme to induce the breach of Quinlan's contract of employment with plaintiff.

108. In pursuance of said conspiracy and scheme, said defendants did the acts and things alleged in this complaint and all such acts were participated in and done by said defendants or by one or more of them, as steps in the conspiracy and for the purpose of inducing the breach of Quinlan's contract of employment with plaintiff.

109. By reason of the foregoing plaintiff has been damaged in the sum of at least \$5,000,000, and there is now due and owing, jointly and severally, from said defendants to plaintiff the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TWENTY-FIVE AGAINST
ALL DEFENDANTS

110. By reason of the foregoing, all defendants wantonly, wilfully and maliciously converted to their own use the sum of at least \$5,000,000 and there is now due and owing from said defendants, jointly and severally to plaintiff, the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TWENTY-SIX AGAINST
ALL DEFENDANTS

111. Upon information and belief, at all times herein-before mentioned, all defendants entered into a conspiracy and scheme to convert plaintiff's property.

112. In pursuance of said conspiracy and scheme, said defendants did the acts and things alleged in this complaint and all such acts were participated in and done by all said defendants or by one or more of them as steps in the conspiracy and for the purpose of converting plaintiff's property.

113. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$5,000,000 and there is now due and owing, jointly and severally by all said defendants to plaintiff the sum of at least \$5,000,000 which has not been paid although duly demanded.

114. By reason of the foregoing, all of the defendants maliciously, wantonly, wilfully and without justification or

excuse, committed a prima facie tort against plaintiff and there is now due and owing from said defendants jointly and severally to plaintiff, the sum of at least \$5,000,000 which has not been paid although duly demanded.

COUNT TWENTY-SEVEN AGAINST
ALL DEFENDANTS

115. By reason of the foregoing, plaintiff has and will continue to be compelled to incur costs and expenses, including investigation expenses, accounting fees and legal fees arising from the investigation, institution and prosecution of this action, the amount of which is unknown at this time but is expected to exceed the sum of \$300,000.

116. By reason of the foregoing, plaintiff has been damaged in the sum of at least \$300,000. and there is now owing jointly and severally, from said defendants to plaintiff the sum of at least \$300,000. which sum has not been paid although duly demanded.

COUNT TWENTY-NINE AGAINST
ALL DEFENDANTS

117. By reason of the foregoing, plaintiff is entitled to an award of punitive damages, jointly and severally, against all defendants in the sum of at least \$5,000,000.

WHEREFORE, plaintiff prays:

1. That plaintiff have judgment against each and every of the defendants, jointly and severally, on the First

Count in the sum of \$15,000,000, being a sum treble the damages sustained by plaintiff, together with appropriate interest.

2. That each of the defendants be enjoined pendente lite and permanently from continuing to engage in any of the wrongful practices complained of in this complaint.

3. That plaintiff have judgment against each and every of the defendant, jointly and severally, in the sum of at least \$5,300,000, together with appropriate interest.

4. That plaintiff have judgment against each and every of the defendants, jointly and severally, for punitive damages in the sum of at least \$5,000,000.

5. That plaintiff have such other and further relief as to the Court may seem just and proper.

LIEBMAN, EULAU, ROBINSON & PERLMAN

By _____

Alian J. Kirschner, A Member
Of the Firm
Office & P. O. Address
32 East 57th Street
New York, New York 10022
Tel. No.: 355-5522

I, Charles R. Head, Jr., residing at 2821 Langdon Drive, Louisville, Kentucky, 40222, make the following voluntary statement to Raymond K. Shepherd, who has identified himself to me as Security Manager of the W. T. Grant Company, 1515 Broadway, New York, New York. No threats, offers or promises of any kind have been made to obtain the following statement which I now make of my own free will.

I was employed by John Waits in May of 1967 as one of his Vice Presidents of his company and I held that position until January of 1972, when I became the Executive Vice President of Centurion Development Corporation and held that position until October 22, 1974, when I left Mr. Waits' employ.

To my knowledge, the only payments prior to 1972 to any employees of W. T. Grant Company were three \$5,000.00 payments made to Mark Haines in the latter part of 1967 and the early part of 1968, and I was told the \$5,000.00 payments were for the lease commitments on Raceland Mall in Louisville, Kentucky, Westland Mall in Louisville, Kentucky and Richmond Plaza Shopping Center in Richmond, Kentucky. Also, during this period of time, Mr. Waits made available to Mr. Haines a 1967 Cougar which he kept in his possession and purchased gas for this vehicle with our company credit cards.

In January, 1972, we formed and incorporated Centurion Development Corporation, with John Waits as President and myself as Executive Vice President and shortly after the forming of the corporation, we entered into a joint venture agreement with Arlen Shopping Centers for the development of many shopping centers. One of the selling points in negotiating the joint venture was the fact that we had advised Arlen that we would provide them with numerous W. T. Grant Shopping Centers.

Shortly after the joint venture with Arlen, John Waits advised me that he had made a deal with Jack Christensen and Mark Haines for them to deliver to us many Grant commitments primarily in the State of Illinois and the Southeastern part of the United States. Also, in that time, he advised me that the deal he had made with Jack Christensen and Mark Haines was going to be expensive for the corporation but that it would be worth it.

Sometime shortly after Mr. Waits advised me of the deal that he had made, he advised me that on the first of each month I should forward to Mark Haines a check made payable to Mr. Haines in the amount of \$3,000.00, with the instructions to mail it not to the W. T. Grant office, but to his home address on Habersham in Atlanta, Georgia. During the period of January, 1972 through probably July of 1973, approximately sixteen checks were issued and made payable to Mark Haines in the total amount of approximately \$45,500.00. In addition to the cash checks, we also purchased for Mr. Haines a used automobile for his use as he saw fit. On some occasions, if we were late in forwarding the above mentioned

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checks, Mr. Haines would call and inquire as to why he had not received his monthly payment. To my knowledge, no other cash payments have been made since July, 1973, and the only other contributions that have been made to Mr. Haines since July, 1973, was the use of a 1972 Cadillac Eldorado which was licensed and owned by Centurion Development Corporation.

With regard to the deal that Mr. Waits had made with Mr. Christensen, at the time of our conversation, I was not instructed to send Mr. Christensen any checks on a monthly basis, and was advised at that time that Mr. Christensen's blessings would cost us approximately \$100,000.00 in the coming year.

The first payment that I noticed going to Mr. Christensen was on August 4, 1972, when Mr. Waits issued to Mr. Christensen a check drawn on one of our corporate accounts titled Mid-America Development Office Account in the amount of \$10,000.00. Some three or four months later, Mr. Christensen visited our office and at that time, I was instructed to cash a series of checks totaling, to the best of my recollection, approximately \$10,000.00. At that time I cashed the checks, I was instructed to give the money to Mr. Waits, as he advised me that he had to make a payment to Mr. Christensen.

The next series of events that transpired between our company and Mr. Christensen occurred in the latter part of 1972 or the early part of 1973, when one of our engineers was requested by Mr. Waits to prepare engineering drawings on a horse barn to be built on a piece of property owned by Mr. Christensen in Connecticut. A considerable amount of time was spent in the preparation of a layout for this particular horse barn.

After we had finished the design work on the horse barn, no form of activity transpired until March of 1973. At that time, I received an invoice from the Umbaugh Pole Building Company, Inc. in the amount of \$10,006.00. The invoice represented itself to be a one-third payment on an agreement dated February 21, 1973. The invoice carried our company name and business address, however, it was addressed to John Christensen.

After I received this invoice, I questioned Mr. Waits as to the nature of this particular building. He, at that time, advised me that we were going to have build and pay for the horse barn that we had previously designed earlier in the year. He also, at that time, advised me that this was part of his deal that he had initially made with Mr. Christensen. The invoice represented that the agreement dated February 21, 1973 was in the amount of \$30,018.00. On April 23, we issued our check in the amount of \$10,006.00 in payment of the above mentioned invoice.

In May, 1973, I received another invoice in the amount of \$10,006.00 as the second installment due on the agreement of February, 1973. At that time I was instructed by Mr. Waits to issue our check in payment of this invoice. On May 14, 1973 our check was drafted as a second installment on the horse barn.

On June 1, I received another invoice calling for the final one-third payment on the construction of the horse barn, and in addition, there

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were charges for extra work totaling approximately \$3,039.00. The balance of \$13,045.00 was paid by two checks, one dated June 9, 1973 in the amount of \$10,006.00 representing the final one-third installment on the February agreement and on July 6, we issued our check in the amount of \$3,039.00 as payment for the additional work done.

Shortly after the construction had been completed on Mr. Christensen's property, Mr. Waits advised me that Mr. Christensen was in need of a new automobile and that he would prefer to have a station wagon and that I should contact him to find out what type of equipment he would like to have on his new automobile. I contacted Mr. Christensen and told him that I needed the information with regard to the purchase of the automobile, such as type of car, optional equipment, color and other pertinent data. He advised me that he would like to have an LTD Country Squire fully loaded. That afternoon I contacted Jim Waits Ford, Inc. and advised them of the particular type of car that was to be ordered. Approximately three weeks later, Mr. James Waits called and advised me that the car had been delivered to his dealership and could be picked up at our convenience. Mr. Waits instructed me to purchase the car but not to have it titled in the state of Kentucky, as Mr. Christensen was going to license it in Connecticut. I inquired of Mr. Waits as to how Mr. Christensen was to pick up the automobile and he advised me to have one of our employees deliver the car to Connecticut for him, which was done within the following few days.

In the summer of 1973 Mr. Waits advised me that he was going to purchase a horse trailer for Mr. Christensen and that this particular horse trailer was being custom made in Dallas, Texas. He also advised me that the trailer was complete, and it would be necessary for one of our employees to drive to Dallas, Texas and pick up the horse trailer and bring it back to Louisville, Kentucky. That weekend, one of our employees, namely, Danny Cox, was given a check in the approximate amount of \$2,700.00, with the instructions to drive to Dallas, deliver the check to the manufacturer, pick up the horse trailer and bring it back to Louisville. The horse trailer was given to Mr. Christensen in Louisville for him to take back to his horse farm in Connecticut.

With respect to payments made to other employees of the W. T. Grant Company, at the time that I was instructed or advised that Mr. Haines would receive monthly payments of \$3,000.00, I also was instructed to send three post-dated checks made payable to Dan Quinlan, each in the amount of \$2,500.00. These checks were given to Mr. Quinlan with the checks being dated August 22, October 2 and November 7. To my knowledge, these were the only cash payments made to Mr. Quinlan.

The only other compensation that I am aware of being given to Mr. Quinlan occurred in either August or September, 1974, when Centurion Development Corporation leased a new Ford Pinto for Mr. Quinlan's personal use, and to my knowledge, this car is still in his possession and the lease payments are being made by Centurion Development Corporation.

I have read the foregoing statement, consisting of four typewritten pages, each of which I have signed and dated this date, January 22, 1975, and this statement is true and correct to the best of my knowledge.

WITNESS:

CHARLES R. HEAD, JR.

By:

Charles R. Head Charles R. Head
Raymond E. Shepherd

MID-AMERICA DEVELOPMENT
OFFICE ACCT.

305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

W.C. NO.

144

21-71/330 K

19-72

\$ 10,000 m⁸

-DOLLARS

John



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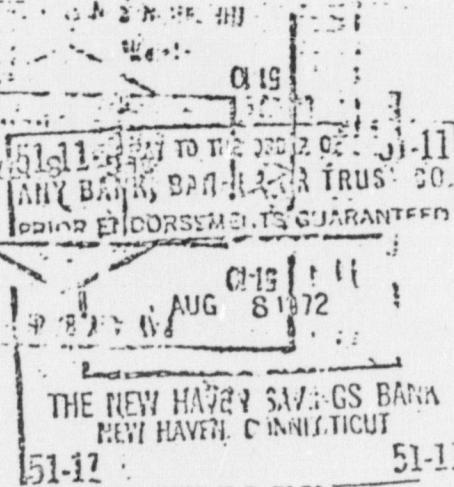
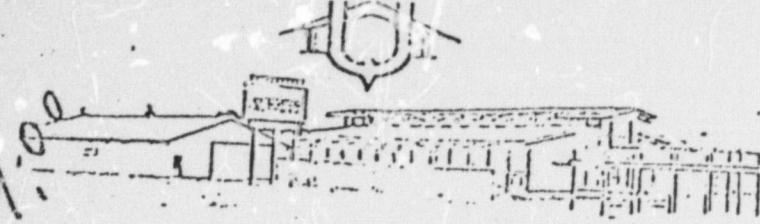


EXHIBIT "C"

- 78 -

INVOICE DATE 6-1-73



BUILD today for a BETTER tomorrow

UMBAUGH POLE BUILDING CO., INC.

4 BRINK AVENUE • P.O. BOX 546 • MIDDLETOWN, NEW YORK 10540 • AREA CODE 914 343-0736

SOLD TO: John Christensen
c/o Mid American Development Co.
Suite 200
305 W. Broadway
Louisville, Kentucky 40202

JOB NO.	Completion Date	Customer Code	Building Code	TERMS: NET CASH		
				Salesman	Foreman	Gen. Foreman
6-419	5-31-73	1400-111-16	2	Auerbach	Kistler	Cady

PER YOUR UMBAUGH AGREEMENT DATED 2-21-73 30,018.00

PLUS - CHANGE #1- SKYBELT AND MISC. CHANGES 84.00
CHANGE #2- PARTITIONS & CEILING 1,094.00
CHANGE #3- HAY MOW & EXTRA DIGGING 1,861.00

TOTAL 33,057.00

INVOICE 6043-1394 PAID 5/14/73
INVOICE 6043-1398 PAID 4/23/73

TOTAL AMOUNT NOW DUE

paid # 730
\$10,006.00
6-9 JWW

\$13,045.00

10,006.00
10,006.00

\$10,006 - paid 4/23/73
\$10,006 - paid 5/14/73
\$10,006 - paid 6/9/73

\$13,045.00

-10,006.00

Balance due → \$ 3,039.00

paid 7/6/73
\$3,039.00
cm

37 MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

178 - 730

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305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

June 9 1973

TEN THOUSAND DOLLARS SIX AND 0/100 DOLLARS



FOR ~~1-6-11~~ go to J. Albersen

10830-00741 63322-209-2

DOLLARS

FOR DEPOSIT ONLY
UMBKAUGH POLE BLDG., CINCINNATI

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FOR DEPOSIT ONLY
UMBAGH, POLE BLDG., CO., WIS.
1973

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EXHIBIT "F"

- 81 -

MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No

-213

21-71/330 K

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305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

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PARK, P. E. G.
1st National Bank
31/2 Georgia

MID-AMERICA DEVELOPMENT
OFFICE ACCT.

305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

Pax
to the
world.

FOR

BANK
of
LOUISVILLE

SEP 7 1972

10830-0071C 13322-209-713

EXHIBIT "H"

-84-

MID-AMERICA DEVELOPMENT
OFFICE ACCT.

305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No 319

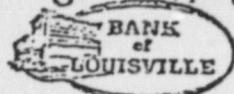
21-71/630 K

October 13 1972

\$ 392.11

PAY TO THE
ORDER OF

Mark Helmer



LOUISVILLE, KY	DOLLARS
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No 319

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Mark Helmer
Mark Helmer

EXHIBIT "J"

-86-

MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No. : 383

0839-0271: K

TO THE
ORDER OF

November 19, 1911.

BY THE
ORDER OF
THE
PARKS & FORESTS DEPARTMENT

\$300⁰⁰

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OF ATLANTA
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ANY BANK, P.E.G.
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21-59 PAY AN

EXHIBIT "K"

MID-AMERICA DEVELOPMENT
OFFICE ACCT.

305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

PAY
TO THE
ORDER
OF

Mr. [unclear]

No. 468

0830-0971 K

January 9 1973

\$3000.00

Three Thousand Dollars



DOLLARS

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No. 468

0830-0971 K

January 9 1973

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EXHIBIT "L"

MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No.

578

0830-0071 K

Mack Harris

One Thousand and



FOR Loan -

Feb 22 1973

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Mack Harris				

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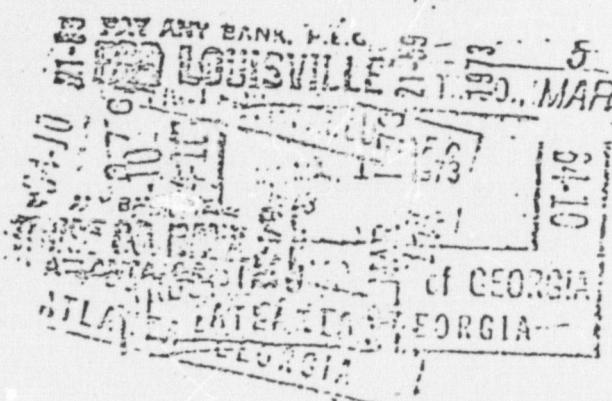
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Atlanta

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Mack Harris				

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FRB LOUISVILLE

A-25-411

EXHIBIT "N"

- 90 -

MID-AMERICA DEVELOPMENT

OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

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M. S. Haines

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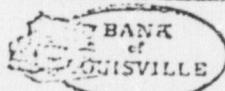
MID-AMERICA DEVELOPMENT
OFFICE ACCT.

305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

PAX
TO THE
ORDER OF

M.S. Haines

Five thousand and



FOR 2020-02-27 2

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EXHIBIT "O"

-91-

MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No

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0330-6971K

PAY TO THE
OWNER OF Mark Haines

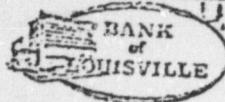
April 13 1972

\$3000.00

Three thousand dollars and 00 cents 1 5 00

EXHIBIT "P" RECEIVED
21-71 APR 13 1973
BANK OF LOUISVILLE

DOLLARS



CO83000210 3372709700

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APR 17 1973
EXHIBIT "P"

POLYGRAPHIC CORP.
PRINTERS AND PUBLISHERS
1000 W. BROADWAY, LOUISVILLE, KY 40202
TELEGRAMS: 214-3333
TELEPHONE: 214-3333

MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

PAY TO THE
OWNER OF Mark Haines

April 13

Three thousand dollars and 00 cents 1 5 00

EXHIBIT "P" RECEIVED
21-71 APR 13 1973
BANK OF LOUISVILLE

FOR _____

EXHIBIT "P" RECEIVED
21-71 APR 13 1973
BANK OF LOUISVILLE

EXHIBIT "P"

Mark Haines

-72-

MID-AMERICA DEVELOPMENT
OFFICE ACCT.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No.

778

0330-0071K

AX
TO THE
FEDERAL BUREAU OF INVESTIGATION



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FOR LAW.

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Mark and Carol Miller DOLLARS

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DEPT OF THE TREASURER
FEDERAL BUREAU OF INVESTIGATION
LOUISVILLE, KENTUCKY

EXHIBIT "Q"

- 73 -

CENTURION DEVELOPMENT CORP.
305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No

336

21-71/330 K

PAY
TO THE
ORDER OF

0 1 0 1 7 3 Oct 10 19 72

Mark Haines

\$ 3000

EXACTLY \$3000 DOLLARS.

DOLLARS



FOR

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MID-AMERICA DEVELOPMENT
OFFICE ACCT.

305 WEST BROADWAY, SUITE 200
LOUISVILLE, KENTUCKY 40202

No

208

21-71/330 K

The logo is oval-shaped with a decorative border. Inside, there is a sketch of a three-story building with a gabled roof and several windows. To the right of the building, the words "BANK of LOUISVILLE" are written in a serif font, with "of" in a smaller size between "BANK" and "LOUISVILLE".

11 LANK, P.E.O. 6
1 OCT 1972 -

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PAID THROUGH CCIS
PAY ANY BANK, P.E.G.
HARRIS TRUST & SAVINGS CO.
CHICAGO, ILLINOIS

6
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PAID THRU
PAY ANY DAY
HARRIS TRUST &
CHICAGO

John Bush

No 208

21-71/830 K

EXHIBIT "S"

-95-

NOEL, MIDDLETON & CRAVER
ATTORNEYS AT LAW

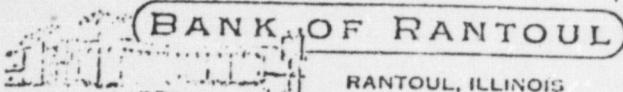
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Sept. 25 1972 70-1928
711

\$1280.00

DAY
TO THE
ORDER OF Daniel Quinlan

One Thousand Two Hundred Eighty and no/100ths----- DOLLARS



Rantoul Plaza Trust

1972 9-25 1928 113 207 103

NOEL, MIDDLETON & CRAVER

STATEMENT

LAW OFFICES

OF

NOEL, MIDDLETON & CRAVER

Rantoul, Illinois 61866

September 25, 1972

Mr. Dan Quinlan

The sum of \$160,000.00 received in trust-----\$160,000.00

Disbursements as follows:

Elmer Bash, purchase of land-----	\$120,000.00
Option payment to Dr. Gordon-----	500.00
Daniel Quinlan-----	38,000.00
Reserved for Attorneys fees-----	220.00

Total disbursements-----\$158,720.00

Balance due-----\$ 1,280.00

NOEL, MIDDLETON & CRAVER
ATTORNEYS AT LAW

2836

Sept. 25 1972 70/1028

DAY
TO THE
ORDER OF Daniel Quinlan

\$1280.00

One Thousand Two Hundred Eighty and no/100ths-----

DOLLARS

NOEL, MIDDLETON & CRAVER

BANK OF RANTOUL

RANTOUL, ILLINOIS

Rantoul Plaza Trust

010711 1928 113 207 10

July 30, 1973

Mr. Jack Christensen
33 Overlook Drive
Madison, Connecticut 06443

Dear Jack:

I am in the process of setting up Frontier Development Corporation, a Kentucky corporation. The stock will be issued fifty (50%) percent to you and fifty (50%) to John.

This corporation will lease the building from Mavis (see attached lease). You will note that the amount for rent must be inserted, as well as the legal description as Exhibit "A".

Should you need any further information or if I can be of any additional service, please let me know.

Best regards,

CENTURION DEVELOPMENT CORPORATION

Charles L. Turner
Vice President - Leasing

CLT/erg

Enclosure

JOHN W. WAITS
PRESIDENT

DATE June 26, 1973

TO Charles Lebovitz
Harold Still
John Foy

RE W. T. Grant Company

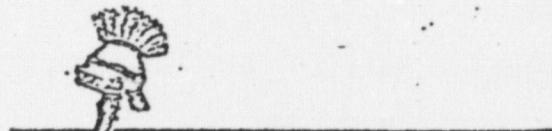
Misc.

I have asked Mr. Still to provide me today with a list of the cities that he feels will qualify for a W. T. Grant Company in the state of Georgia, Alabama and Mississippi. I have further drafted a letter to Mr. Haines asking him to schedule the time necessary to review said sites, prior to asking retail for a proposal. Actually my concern is to get these towns on record in the Atlanta office for Mr. Haines to eliminate consideration for our competition. As you are well aware, I have the North Carolina and South Carolina files on the cities that we feel are to be considered by Grants, and as advised earlier, we are in the process of researching Arkansas. Any city in that area that you may have knowledge of, I would appreciate your advising whereas I may also put that city on the schedule.

I am assuming that I will be advised this week of the cities in Tennessee that retail wants to consider proposing Big K and I will keep you posted.

CC: Charlie Turner
Chuck Head

LOUISIANA OFFICE:
3915 ST. CHARLES AVENUE
NEW ORLEANS, LOUISIANA 70115
APT. 704 — (504) 899-6746



CENTURION DEVELOPMENT CORPORATION

LOUISVILLE OFFICE:
305 WEST BROADWAY SUITE 200
LOUISVILLE, KENTUCKY 40202
(502) 583-8858 583-8859 583-8850

EXHIBIT "W"

-99-

w

Haines record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

W. T. GRANT COMPANY, : 75 Civ.

Plaintiff, :

AFFIDAVIT

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWW,
INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF LOUISIANA,
INC., MID-AMERICA DEVELOPMENT,
DEVELOPMENT CORPORATION OF MID-
AMERICA, INC., UMBAUGH POLE BUILDING
COMPANY, INC., also known as
UMBAUGH CO., FRONTIER DEVELOPMENT
CORPORATION, JOHN DOES I THROUGH
X, the names being fictitious, the
true names of said defendants
being unknown to plaintiff at the
present time,

Defendants. :

-X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT KRUGER, being duly sworn, deposes and says:

1. I am associated with Liebman, Eulau, Robinson & Perlman, attorneys for plaintiff, am admitted to practice before this Court and submit this affidavit in support of plaintiff's application for an order pursuant to Rule 4(e), permitting Herbert Robinson, Julian S. Perlman, Allan J. Kirschner, Joseph Stone, Robert Kruger, Lawrence M. Rosenstock, Jeffrey I. Klein

Ex "D" to RL affid. of 3/6/75

-100-

and Wendy Sawyer to serve process in this action upon defendants John A. Christensen ("Christensen"), Mavis Christensen, Mark S. Haines ("Haines"), Daniel Quinlan ("Quinlan"), John W. Waits ("Waits") and Umbaugh Pole Building Company, Inc. ("Umbaugh"), rather than having the United States Marshal serve process upon said defendants. All of the persons for whom authorization is sought are over the age of 18 years and are not parties to this action.

2. Christensen and Mavis Christensen are residents of Connecticut, Haines is a resident of Georgia, Quinlan is a resident of Texas, Waits is a resident of Kentucky and Umbaugh is a New York Corporation.

3. Christensen, Haines and Quinlan are all high level employees of plaintiff; all are employed in plaintiff's real estate department. Christensen is plaintiff's Real Estate Vice President; Haines is a Real Estate Regional Manager and Quinlan is a real estate negotiator. All three are charged, in plaintiff's complaint, with accepting bribes and kickbacks from Waits and from corporations dominated by Waits, all of which are named defendants in this action. Mavis Christensen is alleged to have participated in the frauds as set forth in the complaint. Umbaugh is alleged to have made bribes and kickbacks to said employees of plaintiff.

4. Christensen, Haines and Quinlan are to arrive this morning at plaintiff's executive offices for a real estate conference. When confronted with plaintiff's allegations, they will undoubtedly leave New York as quickly as possible, take steps to secrete their illgotten gains and cover their tracks. Simultaneously with the service of process, all three defendants will be served with an order to show cause, containing, if granted, a temporary restraining order, to attach their property and enjoin the transfer of their property.

5. Mavis Christensen, Waits and Umbaugh will, when apprised of plaintiff's action, will also attempt to cover their tracks and transfer their property, to the extent possible.

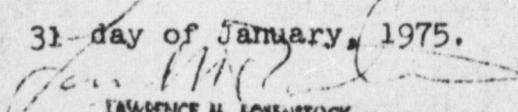
6. In order to serve Christensen, Haines and Quinlan in New York, and to prevent the transfer of the property of these defendants, plaintiff seeks leave to serve them by the persons named in this application.

WHEREFORE, plaintiff respectfully requests that the application be granted in all respects.


ROBERT M. KRUGER

Sworn to before me this

31 day of January, 1975.


LAWRENCE M. ROSENSTOCK
Notary Public, State of New York
No. 31-8657065
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

W. T. GRANT COMPANY,

:

Plaintiff,

: 75 Civ. 471 - CLB

-against-

: ORDER TO SHOW
CAUSE FOR
ATTACHMENT AND
PRELIMINARY
INJUNCTION WITH
TEMPORARY
RESTRANDING ORDER

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business
as JOHN W. WAITS ASSOCIATES,
JWW, INC. CENTURION DEVELOPMENT
CORPORATION, CENTURION OF
LOUISIANA, INC., MID-AMERICA
DEVELOPMENT, DEVELOPMENT
CORPORATION OF MID-AMERICA, INC.,
UMBAUGH POLE BUILDING COMPANY,
INC., also known as UMBAUGH CO.,
FRONTIER DEVELOPMENT CORPORATION,
JOHN DOES I THROUGH X, the names
being fictitious, the true names
of said defendants being unknown
to plaintiff at the present time,

:

:

:

:

:

:

:

Defendants.

:

X

Upon the complaint in this action, the affidavits
of James G. Kendrick and Herbert Robinson sworn to the 31st
Robert Kriger
day of January, 1975 and upon all the exhibits annexed hereto
it is:

ORDERED: that defendants JOHN A. CHRISTENSEN (herein-
after "CHRISTENSEN"), MAVIS CHRISTENSEN (hereinafter "M.
CHRISTENSEN"), MARK S. HAINES (hereinafter "HAINES"), DANIEL
QUINLAN (hereinafter "QUINLAN"), JOHN W. WAITS (hereinafter

"WAITS") and UMBAUGH POLE BUILDING COMPANY, INC., (hereinafter "UMBAUGH"), show cause before this Court at the United States Court House, Foley Square, New York, New York, Room 706 on the 3rd day of February 1975, at 9:00 o'clock, why an order should not be entered granting plaintiff:

(A) an attachment on all the property, debts, obligations and assets of:

(1) CHRISTENSEN in the amount of \$226,780;

(2) M. CHRISTENSEN in the amount of \$226,780;

(3) HAINES in the amount of \$274,495;

(4) QUINLAN in the amount of \$105,850;

(5) WAITS in the amount of \$607,125 and

(6) UMBAUGH in the amount of \$226,780;

pursuant to Rule 64 of the Federal Rules of Civil Procedure and CPLR Article 62;

(B) a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and CPLR Article 63 restraining

and enjoining the aforesaid defendants,
their agents, servants, employees and
attorneys, and all persons, firms,
corporations or other entities acting
under the aforesaid defendants' domination
or control or in active concert or participa-
tion with such defendants and all persons,
firms, corporations or entities having
possession of any property or assets in
which the aforesaid defendants have an
interest or upon such debts due and owing
to said defendants, pending the final
hearing and determination of this action,
from removing, transferring, dissipating
or spending all property, debts, obligations
or assets in the amounts above stated in
which such defendants have an interest
on the grounds there are causes of action pending against the
aforesaid defendants to recover damages against said defendants
for fraud, deceit and conversion and on the grounds that the
individual defendants are not residents of the State of New
York, and on the grounds that if such relief is not granted
plaintiff's rights and remedies against the aforesaid defendants

Deleted
1-B/USDS

will be irreparably harmed and destroyed; and

It appearing to the Court that the relief requested by plaintiff is warranted and that immediate and irreparable injury, loss or damage will result to plaintiff if such relief is not granted, and plaintiff having given security approved by the Court in the sum of \$ for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully restrained or enjoined, it is

ORDERED that defendants CHRISTENSEN, M. CHRISTENSEN, HAINES, QUINLAN, WAITS AND UMBAUGH, their agents, servants, or employees and attorneys and all persons, firms, corporations or entities acting under the aforesaid defendants' domination or control or in active concert or participation with such defendants and all persons, firms, corporations or entities having possession of any property, debts, obligations or assets in which the aforesaid defendants have an interest or upon such debts due and owing to said defendants are enjoined and restrained until further order of this Court from removing, transferring, dissipating or spending all property or assets in which they have an interest as follows:

- (1) \$226,780 for CHRISTENSEN;
- (2) \$226,780 for M. CHRISTENSEN;
- (3) \$274,495 for HAINES;
- (4) \$105,850 for QUINLAN;

[~~(5)~~] \$607,125 for WAITS; and

(6) \$226,780 for UMBAUGH;

and it is further

ORDERED that this order will expire in days after entry unless within such time this order for good cause shown is extended for a like period or unless defendants or any of them consent that it may be extended as to them for a longer period; and it is further]

ORDERED, that ^{personal} service of this Order to Show Cause and Temporary Restraining Order, together with a copy of the papers upon which it is granted upon defendants on ~~or before~~ the 31st day of JANUARY 1975 by 4:30 o'clock in the ^{P.} M. be deemed good and sufficient service.

Dated: New York, New York
January 31, 1975

Issued at 10:45 A.M.

A/ CHARLES L BRIGANT JR.
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

W. T. GRANT COMPANY,

Plaintiff,

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWW, INC.,
CENTURION DEVELOPMENT CORPORATION,
CENTURION OF LOUISIANA, INC.,
MID-AMERICA DEVELOPMENT, DEVELOPMENT
CORPORATION OF MID-AMERICA, INC.,
UMBAUGH POLE BUILDING COMPANY, INC.,
also known as UMBAUGH CO., FRONTIER
DEVELOPMENT CORPORATION, JOHN DOES I
THROUGH X, the names being fictitious,
the true names of said defendants being
unknown to plaintiff at the present
time,

AFFIDAVIT IN SUPPORT
OF MOTION FOR AN
ORDER OF ATTACHMENT,
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

1 of 2

Defendants.

-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JAMES G. KENDRICK, being duly sworn, deposes and says:

1. I am Chairman of the Board and President of
W.T. Grant Company (hereinafter "Grant") and based upon the
documents annexed hereto, as well as records of Grant, am fully
familiar with the facts recited in this affidavit. I submit
this affidavit in support of Grant's motion for:

-109-

(A) an Order of Attachment in the amount of
(i) \$226,780 on the property of the defendant John A. Christensen (hereinafter "Christensen");

(ii) \$226,780 on the property of defendant Mavis Christensen (hereinafter "M. Christensen");

(iii) \$274,495 on the property of the defendant Mark S. Haines (hereinafter "Haines");

(iv) \$105,850 on the property of the defendant Daniel Quinlan (hereinafter "Quinlan");

(v) \$607,125 on the property of the defendant John W. Waits (hereinafter "Waits"); and

(vi) \$226,780 on the property of the defendant Umbaugh Pole Building Company, Inc. (hereinafter "Umbaugh"); and

(B) A preliminary injunction and temporary restraining order restraining Christensen, M. Christensen, Haines, Quinlan, Waits, and Umbaugh, their agents, servants, employees and attorneys, and any person, firm or corporation

acting under their domination or control,
and any person, firm or corporation having
possession of any property in which any of
them have an interest or upon such debts
due and owing to any of them, from trans-
ferring, dissipating or spending such
property.

2. The basis of this motion is predicated upon a conspiracy engaged in among Christensen, Haines and Quinlan, who until today were employees of Grant, and M. Christensen, the wife of Christensen, Waits, a real estate developer, Umbaugh, a supplier of building supplies, together with other business entities dominated or controlled by Waits, as set forth in Grant's complaint (a copy of which is annexed hereto as Exhibit "A"). At this time Grant is only seeking relief against the defendants set forth in paragraph 1. For convenience of this affidavit Waits and the other corporations and business entities controlled by him will hereinafter sometimes be referred to as the "developer defendants". All defendants were engaged in the conspiracy to

(A) violate the Antitrust Laws of the United States by restricting competition among shopping center developers in a position to submit leases and shopping center sites and to

effect shopping center leases with Grant in substantial portions of the United States;

(B) violate various sections of the Penal Law of the State of New York, and §340 of the General Business Law of the State of New York (The Donnelly Act);

(C) violate various sections of the Penal and Business Laws of the States of Connecticut, Georgia, Illinois, Kentucky and Louisiana, and other jurisdictions;

(D) defraud Grant of its money and property;

(E) convert Grant's money and property to the defendants' own use and benefit;

(F) abuse the trust and confidence Grant placed in the employee defendants;

(G) effect and induce breaches of the fiduciary duties the employee defendants owed to Grant;

as well as other actionable wrongs for which all of the defendants are jointly and severally liable as set forth in the complaint (Exhibit "A") which is incorporated in this affidavit as though fully set forth.

R

FACTUAL BACKGROUND

3. As is well known, Grant is a nationwide retailing organization which, until recently, operated more than one thousand (1000) stores with related facilities including distribution centers and the like throughout the United States. In recent years, Grant's annual sales have exceeded one and one-half billion dollars.

4. As will be set forth in more detail subsequently, the employee defendants were employed by Grant, were all senior executives in its real estate department and were entrusted with the responsibility for negotiating, recommending and approving leases for stores located or to be located in shopping centers throughout the United States upon terms most favorable to Grant, including, but not limited to, price and location. In the course of the employee defendants' duties, they did in fact negotiate, recommend and approve leases with the developer defendants. However, Grant was not informed by any of the defendants that such leases were obtained through the bribery of Grant's employees as more fully set forth in this affidavit. Moreover, Grant was unaware at the time that the leases were entered into that the locations of the shopping centers, with respect to the attraction of customers and the build-up and development of sales, was poor. In fact, Grant had no knowledge of such acts until January 20, 1975. Under no circumstances would Grant have entrusted such

important and extensive negotiations, involving as it did the expansion by Grant into suburban shopping center complexes located throughout the United States, to disloyal executive employees.

5. The illegal means used to further the aforesaid conspiracy was in the form of payments of "kickbacks" and "bribes" made by the developer defendants to the employee defendants. We now have knowledge that the amount of such bribes exceeded \$100,000 and we believe that further investigation will establish that the extent of those bribes ran into the hundreds of thousands of dollars. I am informed by our attorneys that the giving and receipt of kickbacks and bribes to the employee defendants violate the Public Policy and Penal Law of New York and are also in violation of the employee defendants' fiduciary duties owed to Grant and constitute acts of fraud and conversion.

6. In addition, throughout the period of the employee defendants employment by Grant, Grant paid salaries and valuable fringe benefits to the disloyal employee defendants, without knowledge of their disloyalty and dishonesty in the sum of at least \$942,565, which I am informed by our attorneys Grant is entitled to recoup.

7. Annexed hereto as Exhibit "B" is a copy of a

statement of Mr. Charles Head who first became employed by Waits and the other developer defendants in May 1967 as Vice President of Waits's company. Mr. Head remained in the employ of the developer defendants until October 1974 and, thus, had first-hand knowledge of all of the acts committed by defendants as set forth in his statement and as communicated to our attorneys. (See accompanying affidavit of Herbert Robinson).

PAYMENTS MADE BY DEVELOPER DEFENDANTS
TO CHRISTENSEN AND M. CHRISTENSEN

8. Christensen was first employed by Grant on August 1, 1960 and was appointed a Real Estate Negotiator on February 1, 1963. On August 1, 1967 he was appointed New England Regional Real Estate Manager; on February 1, 1968 became Real Estate Director; and on March 1, 1973 became Real Estate Vice President - one of the highest positions in Grant. Indeed, Christensen was the nineteenth highest paid employee in Grant during recent years. His annual compensation from 1967 to date has ranged from \$42,000 to \$72,000. His aggregate compensation for the years 1972, 1973 and 1974 was at least \$169,162. His total compensation for all of the years he was employed by Grant was \$613,407.

9. As set forth at page 2 of Mr. Head's statement (Exhibit "B"), the first payment that he was aware of that went

to Christensen was a check dated August 4, 1972 in the amount of \$10,000 represented by "one of our corporate accounts" apparently referring to a Centurion account, bearing the title "MID-AMERICA DEVELOPMENT OFFICE ACCT". A copy of the face and reverse side of the check representing such payment is annexed hereto as Exhibit "C". Although the notation "loan" appears on the face of that check, other information subsequently set forth in this affidavit as well as the accompanying affidavit of Herbert Robinson, establishes that it was not a "loan" but that such notation was affixed to the check solely for purposes of concealment. I note that said check shows deposit in the New Haven Savings Bank, New Haven, Connecticut, although Christensen's salary checks were deposited in the Union Trust Company, New Haven, Connecticut.

10. In addition, during the latter part of 1972, Mr. Head cashed a series of checks approximating \$10,000 which Waits stated he was using to make payment to Christensen. (See Exhibit "B").

11. Grant's employees have advised me that Christensen keeps horses on his property at 33 Overlook Drive, Madison, Connecticut. As set forth in Mr. Head's statement, Waits had one of his company engineers prepare engineering drawings for a horse barn to be built on Christensen's Connecticut property and in March 1973, MID-AMERICA DEVELOPMENT (hereinafter "MAD") having

received an invoice from Umbaugh, 4 Brink Avenue, Middletown, New York, in the sum of \$10,006.00 representing one-third payment pursuant to agreement dated February 21, 1973. Such invoice was addressed to Christensen, but with his company's name and business address. In response to a question from Mr. Head, Waits informed him that he was building and paying for a horse barn for Christensen that had been designed previously and that such payment was part of the "deal" that Waits "had initially made with Mr. Christensen" (see Exhibit "B", page 2).

12. On or about April 18, 1973 or April 23, 1973, MAD issued its check No. 861, dated April 18, 1973 in the amount of \$10,006 payable to the order of Umbaugh as shown by Exhibit "D" annexed hereto. (Although said check is dated April 18, 1973, Umbaugh credited it on April 23, 1973 which may account for Mr. Head's statement that it was paid on April 23, 1973). In May 1973, another invoice was received from Umbaugh in the amount of \$10,005 and on or about May 14, 1973 a second installment of \$10,006 was paid by MAD, presumably to Umbaugh. (See Exhibit "B", page 2).

13. On June 1, 1973, Umbaugh submitted its invoice setting forth that it was for labor and services

"Sold to: John Christensen
c/o Mid American Development Co.
Suite 200
305 W. Broadway
Louisville, Kentucky, 40202"

A copy of said invoice is annexed hereto as Exhibit "E", a copy of MAD's check No. 730 dated June 9, 1973 in the sum of \$10,006 is annexed hereto as Exhibit "F", and a copy of MAD's check No. 809 dated July 6, 1973 in the sum of \$3,039 made payable to the order of Umbaugh and representing "the balance due" in that amount is annexed hereto as Exhibit "F1". (I note that said check bears the signature of Carey D. Matthews. I am advised that Carey D. Matthews was Mr. Waits' private secretary at that time.)

14. The foregoing documents establish that Christensen received from Waits, Centurion, and MAD at least \$40,018, to which must be added the \$10,000 in cash referred to in Mr. Head's statement, or a total of at least \$50,018 that is known at the present time.

15. In addition, Mr. Head, pursuant to Waits' instructions and apparently at the specific request of Christensen, arranged for the purchase by Waits, Centurion and MAD of an LTD Country Squire "fully loaded" (which I take to mean with all options) through James Waits Ford, Inc., which I am told is owned jointly and equally by Waits and Waits's brother.

16. Our attorney advises me that Mr. Head informed him by telephone on January 28, 1975 that the LTD Country Squire

listed at approximately \$6,700 to \$6,800 and cost MAD approximately \$4,900.00.

17. As further set forth in Mr. Head's statement, Waits, Centurion and MAD purchased a horse trailer for Christensen and had it driven from Dalls to Louisville, Kentucky where defendant Christensen picked it up for transfer to Connecticut. The horse trailer cost approximately \$2,700.00. Thus, at least \$57,618 in cash, farm improvements, automobile and horse trailer was secretly paid to Christensen by Waits, Centurion and MAD.

18. Accordingly, an order of attachment, injunction and temporary restraining order is sought against Christensen and M. Christensen in the sum of \$226,780 and was arrived at as follows:

Salary paid to Christensen from 1972 through 1974	\$169,162
Other property received by Christensen and	
M. Christensen	\$ 57,618
	<u>\$226,780</u>

Payments Made to Haines

19. From 1967 to 1972 Haines was the Regional Real Estate Manager for the Central Region at an annual compensation which ranged from \$15,500 in 1967 to \$35,470 in 1972. Beginning May 1st, 1972, and continuing until his termination by Grant, on this date, Haines was the Real Estate Manager for the Southern Region which comprises the South Eastern portion of the United States. His compensation for 1973 through 1974 was \$24,600 and \$33,100, respectively.

20. Haines was first employed by Grant on April 21, 1965 as a Real Estate Negotiator Trainee; received interim promotions until he was appointed Real Estate Negotiator for the Central Region on February 1, 1966, and on August 1, 1967 his title changed to Regional Real Estate Manager for that region. Accordingly, Haines' aggregate compensation from 1965 to the date of this affidavit was at least \$232,681.

21. As set forth in Head's statement, Waits made three (3) five thousand (\$5,000.00) Dollar payments to Haines in the latter part of 1967 and the early part of 1968; \$5,000 each for lease commitments effected through Haines on behalf of Grant with Waits on Raceland Mall, Louisville, Kentucky; Westland Mall, Louisville, Kentucky; and Richmond Park Shopping Center, Richmond, Kentucky. During the same period of time Waits

furnished to Haines the use and possession of a 1967 Cougar, together with a Waits credit card for the purchase of gas and other automotive accessories.

22. As set forth in Mr. Head's statement (Exhibit B, Page 1) Waits, Centurion and MAD subsequently paid Haines approximately \$5,400. which Haines actively solicited from the developer defendants. The payments made to Haines in the sum of \$32,392.11 evidenced by the annexed documentation, consist of copies of checks payable to the order of Mark Haines or M.S. Haines.

<u>EXHIBIT NO.</u>	<u>DATE</u>	<u>CHECK NO.</u>	<u>AMOUNT</u>
"G"	7/21/72	126	\$3,000.00
"H"	9/7/72	213	\$3,000.00
"I"	10/31/72	310	\$3,000.00
"J"	10/13/72	319	\$ 392.11
"K"	11/16/72	389	\$3,000.00
"L"	1/2/73	468	\$3,000.00
"M"	1/26/73	506	\$3,000.00
"N"	2/28/73	578	\$3,000.00
"O"	3/2/73	580	\$5,000.00
"P"	4/13/73	675	\$3,000.00
"Q"	7/2/73	778	\$3,000.00
			<hr/> \$32,392.11

In addition, there is annexed hereto as Exhibit "R", check of Centurion dated October 10, 1972, No. 336, in the sum of \$3,000.00.

23. In addition, the developer defendants made available to Haines since July 1973 the use of a 1972 Cadillac Eldorado owned by Centurion for which services may have been furnished, as was the case with the 1967 Cougar. Thus, as corroborated by Mr. Head's statement (Exhibit B) and Exhibits G through R the total secret payment made to Haines by the developer defendants amounted to at least \$60,500.

24. Accordingly, an order of attachment, injunction and temporary restraining order is sought against Haines in the sum of \$274,495 and was arrived at as follows:

Salary paid to Haines from 1967 through 1974	\$213,995.00
Other payments received by Haines	\$60,500.00
	<u>\$274,495.00</u>

Payments Made to Quinlan

25. As set forth on page 3 of Mr. Head's statement, Mr. Head gave Quinlan three post-dated checks in the sum of \$2,500 each. Annexed hereto as Exhibit "S" is a copy of a check No. 208 dated October 2, 1972 of MAD in the amount of \$2,500. Note that such check is made payable to the order of Dan Quinlan and is signed by John W. Waits as are most of the other checks annexed to my affidavit. I am informed that Waits used MAD office account checks for the most part because it was his tendency to carry blank checks around with him and his issuance

of Centurion checks tended to confuse the record keeping of Centurion's bank account.

26. In addition, as set forth in Mr. Head's statement either in August or September, 1974 Centurion leased a new Ford Pinto to Quinlan for his personal use.

27. Although Mr. Head states that the above were the only cash payments made to Quinlan, (of which he was aware), we are in possession of a copy of a closing statement of Noel, Middleton and Kraver, attorneys in Rantoul, Illinois with respect to the lease of Rantoul Plaza by Grant. That statement set forth a disbursement to Quinlan in the sum of \$38,000. A copy of that closing statement is annexed hereto as Exhibit "T".

28. In addition, annexed hereto as Exhibit "U" is a copy of a check of said law firm No. 2838, dated September 25, 1972, payable to the order of Quinlan in the sum of \$1,280.

29. Since Noel, Middleton and Kraver were the attorneys for Centurion with respect to the Rantoul Plaza lease to Grant, Quinlan received at least the sum of \$46,780.00 from or under the auspices of the developer defendants.

30. Accordingly, an order of attachment, injunction and temporary restraining order is sought against Quinlan in the sum of \$105,850 and was arrived at as follows:

Salary paid to Quinlan from 1972 to 1974	\$ 59,070.00
Other payments made to Quinlan	\$ 46,780.00
	<u>\$105,850.00</u>

The Monies Paid by the Developer Defendants
to the Employee Defendants were Outright
Kick-Backs.

31. Our attorney in this matter is Herbert Robinson, Esq., of the law firm of Liebman, Eulau, Robinson & Perlman. Under Mr. Robinson's general direction further investigation has been made. (See his accompanying affidavit). He informs me that he has been advised that the "loan" notations which appear on some of the checks issued to the employee defendants was a complete subterfuge and that no promissory notes exist evidencing any such loan, that no interest whatsoever has been paid and that no repayment of any principal has been made.

32. Moreover, Mr. Robinson informs me that even if the payments were in fact loans, the employee defendants would still have breached their fiduciary duties which they owed to Grant by accepting such loans from real estate developers with which Grant did business and which had an interest adverse to Grant.

33. However, as further proof that the payments were indeed kick-backs and not loans, Mr. Robinson was informed that a meeting was held in 1972 or 1973 at Centurion's office in Louisville, Kentucky, which was attended by Waits, Mr. Head and Messrs. John Radcliffe and William Malone, and others. Messrs. Radcliffe and Malone and such others were with the accounting firm of Coopers and Lybrand, in its Louisville, Kentucky offices;

Mr. Radcliffe being a partner in said firm. At that meeting, Mr. Waits asked how best to treat the payment of monies by the developer defendants to the Grant employees in connection with real estate transactions between such developers and Grant and that he, Waits, had marked the checks as representing "loans" because he believed that this was the best way to handle these payments. In response to questions by the accountants, Waits acknowledged that there were no documents evidencing any loan at which point the accountants asked what the transactions actually represented. Waits replied that they were payoffs to the Grant executives.

Other Wrongful Acts of Defendants.

34. In addition, Mr. Robinson ascertained that some time prior to 1970 Waits and Haines, together with their respective wives went on a trip to Acupulco, Mexico with all expenses for transportation, lodging, meals, entertainment, etc., which was paid by Waits. In addition, Waits paid for an additional trip to Acupulco, Mexico, as well as for a trip to the Bahamas and in late 1973 or early 1974 Waits accompanied Haines on a trip through North Carolina and South Carolina including a visit to Hilton Head Island, all of the expenses for which were paid for by Waits.

35. I am also informed that in the middle of 1973, Waits and Christensen conferred with each other with respect to

additional payments to be made to Christensen and the method by which such payments could be accomplished. As part of that discussion Christensen suggested that they organize a corporation which would purport to lease the horse barn (built by Umbaugh and paid for by the developer defendants) from defendant M. Christensen [Christensen's wife], and that the horse barn and related property was in or would be put in M. Christensen's name. Through such dummy conduit, real estate commissions on further lease transactions between the developer defendants and Grant would be paid to such dummy, defendant Frontier Development Corporation, a Kentucky corporation (hereinafter "Frontier"). Annexed hereto as Exhibit "V" (see accompanying affidavit of HR) is a copy of a letter addressed to Christensen by a Charles L. Turner who is described as Vice-President - Leasing of Centurion which sets forth the foregoing transaction or proposed transaction. I am informed that Mr. Turner was employed by Waits, d/b/a John W. Waits Associates (hereinafter "JWWA"), JWW, Inc., (hereinafter "JWWI") and Centurion.

Relief Sought Against Waits

36. As set forth earlier Waits, through the other developer defendants gave bribes and kick-backs to the employee defendants in an amount which we now know to be at least \$ 164,898. In addition, Waits and the other developer defendants

controlled by him caused the employee defendants to violate their fiduciary duties to Grant and thus cause Grant to suffer additional damage by way of compensation paid to the employee defendants as set forth supra in the sum of \$442,227.

37. Accordingly, an order of attachment, injunction and temporary restraining order is sought against Waits in the sum of \$607,125. and was arrived at as follows:

Bribes and kick-backs given to the employee defendants	\$164,398
Salary paid by Grant to the employee defendants from 1967 to 1974, respectively, as above set forth	<u>\$442,227</u>
	\$607,125

Relief Sought Against Umbaugh

38. An order of attachment, injunction and temporary restraining order is sought against Umbaugh in the sum of \$226,780 and was arrived at as follows:

Bribes and kick-backs given to Christensen through the Umbaugh-Waits collaboration	\$ 47,618
Salaries paid to Christensen 1972-1974	<u>\$169,162</u>
	\$226,780

CONCLUSION

39. Inasmuch as Mr. Head is no longer employed by Waits we do not at this time have information as to the payment made by Waits and the other developer defendants to the employee defendants after July 2nd, 1973. However, it is only reasonable to assume that in accordance with an established course of conduct, additional bribes and kick-backs were in fact made.

40. It is obvious that Waits had the employee defendants "in his pocket". Indeed, Waits' corruption of the employee defendants was deliberately intended to restrict competition of other shopping center developers in securing commitments and effecting leases with Grant. Waits almost openly boasted about this to his associates. As set forth in Mr. Head's statement, Waits represented to Arlen Shopping Centers, Inc., that he had substantial influence with Grant. This could have been effected only by his improper dealings with the employee defendants, but he went far beyond merely boastful statements. He communicated with others to such effect. Annexed hereto as Exhibit "W" is a letter written by Waits to Arlen Shopping Centers in which Waits details the vast scope and extent of his influence with Grant.

41. The employee defendants, who were charged with responsibility for negotiating complex and substantial leasing transactions for Grant, over a period of many years, put their

own selfish interests ahead of the duty of undivided loyalty which they owed Grant. Instead, their greed made Grant a captive lessee for Waits and his instrumentalities, the primary effect of which was to enrich Waits, the other developer defendants, the employee defendants and to defraud Grant.

42. Grant has only just begun to uncover the multi-faceted frauds of the defendants. Grant, at this time, is not able to determine the precise amount by which it was defrauded, but, at an absolute minimum Grant is entitled to recover at least the amounts fraudulently received by its executives from the developer defendants, in addition to the salaries paid by Grant to the employee defendants during the period of disloyalty. Thus Grant is only seeking an order of attachment, and injunction in amounts representing the minimum damages against it established by the proofs submitted with this affidavit.

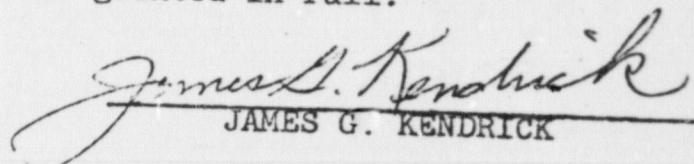
43. Such proofs also establish that the complex of the developer defendants paid the employee defendants at least \$ 164,898. Since the developer defendants also corrupted these Grant employees and diverted their services during the respective periods of secret payments to them, such developer defendants should be held accountable jointly and severally with the employee defendants for the compensation paid to them without knowledge of their disloyalty, effected through the corruption by Waits and his various business entities.

44. The amount of the attachment and injunction sought by Grant is over and above all possible counterclaims known to exist.

45. No other previous remedy has been secured or sought in this action.

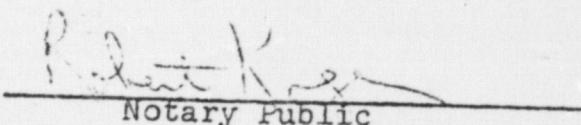
46. No prior application has been made for the relief sought on this motion.

WHEREFORE, it is respectfully requested that the relief sought in the annexed order be granted in full.



JAMES G. KENDRICK

Sworn to before me this
31st day of January, 1975



ROBERT KRUGER
Notary Public

ROBERT KRUGER
Notary Public, State of New York
No. 31-7371400
Commissioned in New York County
Commission Expires March 30, 1971

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

W. T. GRANT COMPANY, :

Plaintiff, :

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL CUTNLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWW,
INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF LOUISIANA,
INC., MID-AMERICA DEVELOPMENT,
DEVELOPMENT CORPORATION OF MID-
AMERICA, INC., UMBAUGH POLE BUILDING
COMPANY, INC., also known as
UMBAUGH CO., FRONTIER DEVELOPMENT
CORPORATION, JOHN DOES I THROUGH
X, the names being fictitious, the
true names of said defendants
being unknown to plaintiff at the
present time,

AFFIDAVIT

2 of 2

Defendants. :

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

HERBERT ROBINSON, being duly sworn, deposes and says:

1. I am a senior partner of the firm of Liebman,
Eulau, Robinson & Perlman, attorneys for W. T. Grant Company
("Grant"), plaintiff in the above action and submit this affidavit
in support of Grant's motion for provisional relief on the
basis of documents furnished to me by and discussions with,

Charles R. Head, Jr. ("Head")

2. In the course of a conference on January 30, 1975, Head informed me that defendant John W. Waits ("Waits") had acknowledged that checks issued by Centurion Development Corporation (a Waits corporation) under its name and the name of "Mid-America Development Office Acct." represented "payoffs" to defendants John A. Christensen ("Christensen") and to Mark S. Haines ("Haines"). He also said that at a meeting in the latter part of 1973 and at subsequent meetings with Waits and his various corporations' accounting firm, Coopers & Lybrand, Waits specifically acknowledged that such checks represented bribes (Waits' word was "payoffs") to defendants Christensen and Haines; that he had marked the face of the checks with a reference to purported loans in the hope that he could secure beneficial tax treatment, perhaps as bad debt deductions. It was Head's recollection that Waits deductions for the payments totaling \$15,000 that Waits had made to Haines in 1967-1968 had been disallowed by the Internal Revenue Service.

3. Head confirmed allegations that Waits had paid all expenses for various trips that Waits had taken with Haines through North and South Carolina, Mexico, the Bahamas and the Hilton Head Inn in South Carolina.

4. Head also confirmed that the law firm of Noel, Middleton and Krever had represented Centurion during the negotiation of the Rantoul Plaza Lease. (See Exhibits T and U annexed to Mr. Kendrick's affidavit, paragraphs 27 and 28).

5. I also confirm Mr. Kendrick's statement (¶35) which annexes a copy of a letter (Exhibit "V") from one Charles L. Turner, who I am advised was an attorney in the employ of defendant Waits and the defendant developer corporations, to Mr. Christensen. In that letter, Mr. Turner confirms that he is organizing Frontier Development Corporation as a Kentucky corporation and he attaches a lease "from Mavis" (Christensen) covering "the building". The letter shows copies to Mr. and Mrs. Christensen, thus establishing that defendant Mavis Christensen was also a party to the transactions complained of in this action.

6. I also requested Corporation Trust Company to ascertain for me whether or not Frontier Development Corporation had been organized in Kentucky. It reported to me that such a corporation had been organized under the name Frontier Development Corporation, Ltd; its Certificate of Incorporation was filed August 6, 1974; and the incorporating attorney is listed as Charles L. Turner, Esq., Suite 118, Executive Park,

Louisville, Kentucky.

61

Herbert Robinson

Sworn to before me this
31st day of January, 1975.

Notary Public - Commonwealth of Kentucky
County Clerk - Jefferson Co.
Commissioned Feb. 25, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

W. T. GRANT COMPANY, :
Plaintiff, :
-against- :
John A. Christensen, Mavis :
Christensen, Mark S. Haines, :
Daniel Quinlan, John W. Waits, :
John W. Waits, doing business as :
John W. Waits Associates, JWW, :
INC., CENTURION DEVELOPMENT :
CORPORATION, CENTURION OF LOUISIANA, :
INC., MID-AMERICA DEVELOPMENT, :
DEVELOPMENT CORPORATION OF MID- :
AMERICA, INC., UMBAUGH POLE BUILDING :
COMPANY, INC., also known as :
UMBAUGH CO., FRONTIER DEVELOPMENT :
CORPORATION, JOHN DOES I THROUGH :
X, the names being fictitious, the :
true names of said defendants :
being unknown to plaintiff at the :
present time, :
Defendants. :
X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT KRUGER, being duly sworn, deposes and says:
I am an attorney associated with the attorneys for
plaintiff in this action. Defendants have not been notified
of plaintiff's request for a temporary restraining order
because had plaintiff done so, defendants would have secreted
their assets, covered their tracks, concocted a story and
refused to come to New York today, where plaintiff can

confront them.

/s/ Robert Kruger

Sworn to before me this
31st day of January, 1975

s/ Jeffrey I. Klein
Notary Public
State of New York
No. 41-2141160, qualified
Queens County
Term expires 3/30/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

W. T. GRANT COMPANY,

Plaintiff,

-against-

JOHN A. CHRISTENSEN, MAVIS CHRISTENSEN,
MARK S. HAINES, DANIEL QUINLAN, JOHN W.
WATTS, JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWW, INC.,
CENTURION DEVELOPMENT CORPORATION,
CENTURION OF LOUISIANA, INC., MID-AMERICA
DEVELOPMENT, DEVELOPMENT CORPORATION OF
MID-AMERICA, UMBAUGH POLE BUILDING
COMPANY, INC., also known as UMBAUGH CO.,
FRONTIER DEVELOPMENT CORPORATION,
JOHN DOES I THROUGH X, the names being
fictitious, the true names of said
defendants being unknown to plaintiff
at the present time,

Defendants.

75 Civ 471 CLB

: ORDER OF
ATTACHMENT

: DISTRICT COURT
FILED

: FEB 3 1975

: S.D. OF N.Y.

The plaintiff, W. T. GRANT COMPANY, having moved this
Court for a preliminary injunction and order of attachment
against defendants JOHN A. CHRISTENSEN (hereinafter "Christensen"),
MAVIS CHRISTENSEN, MARK S. HAINES (hereinafter "Haines"), DANIEL
QUINLAN (hereinafter "Quinlan"), JOHN W. WAITS (hereinafter
"waits"), and UMBAUGH POLE BUILDING COMPANY, INC., also known
as UMBAUGH CO. (hereinafter "Umbaugh"), and the Court having
considered the Summons and Complaint, the affidavits of James
C. Kendrick, Herbert Robinson and Robert Kruger, all sworn to
January 31, 1975, together with all the exhibits annexed thereto,

-137-

NEW YORK,
Sworn to before me, this

day of

NEW YORK COUNTY OF

in support of said motion, all with proof of due service thereof,
and the Court having heard oral arguments by the parties in open
court,

And the Court having found after due deliberation that
(a) defendant Christensen, Mavis Christensen, Haines, Quinlan,
and Waits are not residents of the State of New York; (b) the
complaint alleges causes of action for money damages against
defendants Christensen, Mavis Christensen, Haines, Quinlan,
Waits and Umbaugh for fraud, deceit and conversion; (c) plain-
tiff has shown a reasonable likelihood of success; (d) the
relief sought here is necessary to protect plaintiff's rights
and remedies; and (e) plaintiff is entitled to an order of
attachment, and John A. Christensen and Mavis Christensen having
entered a general appearance,

IT IS NOW HEREBY ORDERED that

1. Any United States Marshal who has received a copy
of this order shall for the district within his jurisdiction
levy upon and take possession of such property in which defen-
dants Haines, Quinlan, Waits and Umbaugh have an interest, and
upon such debts owing to said defendants as will satisfy plain-
tiff's demand as follows:

(a) \$226,780 for Waits;
(b) \$274,495 for Haines;
(c) \$105,850 for Quinlan; and
(d) \$226,780 for Umbaugh

together with interest and costs, including poundage and fees
the United States Marshal, and that said United States Marshal
proceed hereon in the manner required by law.

2. Plaintiff file with the Clerk of the Court separate bonds for each defendant in the sum of \$226,780 for Waits, \$174,495 for Haines, \$105,850 for Quinlan and \$226,780 for Umbaugh, with good and sufficient surety, \$ 206,780 of which is conditioned that the plaintiff will pay to Waits all legal costs and damages which may be sustained by reason of the attachment if Waits recovers judgment or if it is finally decided that plaintiff was not entitled to an attachment or preliminary injunction with respect to Waits property; \$ 854,495 of which is conditioned that the plaintiff will pay to Haines all legal costs and damages which may be sustained by reason of the attachment if Haines recovers judgment or if it is finally decided that plaintiff was not entitled to an attachment or preliminary injunction with respect to Haines' property; ~~\$~~ ~~of which is conditioned that the plaintiff will pay~~ to Quinlan all legal costs and damages which ~~may~~ be sustained by reason of the attachment ~~if~~ Quinlan recovers judgment or if it is finally decided that plaintiff was not entitled to an attachment or preliminary injunction with respect to Quinlan's property; and \$ 206,780 of which is conditioned that the plaintiff will pay to Umbaugh all legal costs and damages which may be sustained by reason of the attachment if Umbaugh recovers judgment or if it is finally decided that plaintiff was not entitled to an attachment or preliminary injunction with respect to Umbaugh's property; and the balance thereof, ~~to wit~~ 1,444

3.

-139-

New York.
Sworn to before me, this

day of

19

NEW YORK COUNTY OF

AN AFFIDAVIT OF PERSONALTY

is conditioned that the plaintiff will pay to the United States
trial all of his allowable fees.

Bethel, New York, New York
February 3, 1975

Entered at 4:45 P.M.

SO ORDERED

Charles Brieant Jr

Charles L. Brieant,
U.S.D.J.

-140-

New York.
Sworn to before me, this

day of

19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

W. T. GRANT COMPANY, : 75 Civ. 471 - CLB
Plaintiff, :
: ORDER TO SHOW CAUSE
JOHN A. CHRISTENSEN, et al., : FOR PROTECTIVE ORDER
Defendants. :

X

Upon the prior proceedings had herein and the affidavit of Robert Layton, Esq., sworn to February 21, 1975 and the exhibits annexed thereto, it is hereby

ORDERED: that plaintiff W. T. Grant Company, by its attorneys, show cause before this Court at the United States Courthouse, Foley Square, New York, New York, Room 706 on the 24th day of February, 1975 at 2:00 o'clock A.M., why an order should not be entered pursuant to Federal Rule of Civil Procedure 26(c), directing that the deposition of defendant Mark S. Haines noticed for February 27, 1975 by order of this Court dated February 14, 1975, not be taken until termination of the criminal proceedings instituted by plaintiff on the grounds

*Tele fac
atty
V.D.*

- ~~1. No good cause exists for the taking of depositions by plaintiff prior to the time within which defendants are required to respond to the Complaint;~~
- ~~2. Substantial doubt exists as to the jurisdiction of this Court over defendant Mark S. Haines; and~~
- ~~3. Plaintiff's institution of criminal prosecutions arising out of the identical facts here at issue requires the~~

staying of civil discovery herein in order to protect the
constitutional rights of defendant Mark S. Haines as well as
his rights to fundamental procedural fairness;

AND entry of a protective order precluding plaintiff from using in any manner in this litigation materials or statements, tape recordings, test results, extracted from Mark S. Haines on January 31, 1975;

AND an order directing counsel for plaintiff not to issue further press statements, participate in press conferences, or furnish material related to this litigation, to the press, and to conduct this litigation in accord with the normal rules applicable to civil litigation; and it is further

ORDERED, that personal service of this Order to Show cause, together with a copy of its supporting affidavit, be

made upon the attorneys for the plaintiff on February 21, 1975,
by 5:30 P.M.

Dated: New York, New York
February 21, 1975.

John F. Ziegler Jr.
John F. Ziegler Jr.
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

W. T. GRANT COMPANY,

Plaintiff,

: 75 Civ. 471 (CLB)

-against-

JOHN A. CHRISTENSEN, et al.,

: AFFIDAVIT IN SUPPORT
OF MOTION FOR
PROTECTIVE ORDER

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) : ss.:

ROBERT LAYTON, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and a member of Layton and Sherman, attorneys for defendant Mark S. Haines.

2. On February 19, 1975, my firm received in the mail a notice to take the deposition dated February 18, 1975, requiring the appearance of Mr. Haines at the offices of plaintiff's attorneys on February 27, 1975. Annexed to said notice was an order dated February 11, 1975 and apparently signed by Judge Brieant on February 14, 1975. The order was apparently procured ex parte at a time when I, as well as several other counsel for individual and corporate defendants had been in contact with counsel for plaintiff, informed them of our representation, and requested extensions of time to move or answer. I have examined the official court file in this matter and there are contained therein general appearances by at least

two sets of attorneys. I am informed by those attorneys that they received no notice of the application for the extraordinary order described above.

3. This action was commenced early in the morning of January 31, 1975 by the filing of a complaint and the securing of an order to show cause which was signed by Judge Brieant at 10:45 A. M. The affidavits in support of Rule 4 orders on file in this action which appoint plaintiff's attorneys to serve the summons and complaint herein state categorically that the plaintiff intended to lure my client Mark S. Haines into the jurisdiction on the pretext of a business meeting and make service of the summons and complaint upon him. Indeed, that is what occurred. However, after commencement of the action and during of an order to show cause in connection with application for a preliminary injunction, plaintiff's attorneys interrogated Mr. Haines for several hours without informing him that a suit had been commenced against him, that he was entitled to legal representation in connection with the allegations made in that suit, and did not serve him with the summons and complaint until they had subjected him to a lie detector test and, it is believed, tape recorded their interrogation of him.

4. Plaintiff and its attorneys then engaged in a wholesale press campaign designed to divert public attention from the \$175,000,000 loss incurred by W. T. Grant Company in its most recent fiscal year and accuse the defendants herein of the violation of criminal laws in various states. On the very day plaintiff secured the ex parte relief and conducted the star chamber proceeding above outlined, plaintiff issued a press release

and its attorneys made questionable statements to the press with respect to this action in which they appeared as counsel. Annexed hereto as Exhibit "A" is the article which appeared in the Saturday, February 1, 1975, edition of the New York Times. An unidentified Grant legal counsel is quoted as stating that "criminal indictments would also be sought". He is also quoted as stating that "defendants also violated a number of penal and business laws of the state".

5. On Monday, February 3, 1975, this Court denied plaintiff's application for a preliminary injunction and immediately thereafter, I am informed, Mr. Herbert Robinson, plaintiff's counsel, visited the offices of the United States Attorney to make complaint against these defendants. This very same Mr. Herbert Robinson shortly thereafter arranged for himself to be interviewed by a reporter for the New York Times, supplied that reporter with a picture of himself, and proceeded to try this case and these defendants in the press once again.

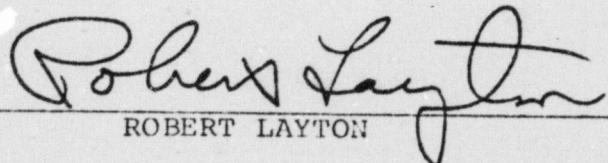
Annexed hereto as Exhibit "B" is a copy of the New York Times interview with Mr. Robinson, who described himself as an expert in "prosecuting business frauds". The impropriety of the conduct of plaintiff's counsel aside, the impact of such prejudicial statements and conduct with respect to a pending action cannot but have substantial prejudicial impact upon the rights of defendants. Plaintiff also sought newspaper coverage in the trade press, where it accused defendants of "taking bribes". Annexed hereto as Exhibit "C" is the article which appeared in the February 3, 1975 Women's Wear Daily.

6. The complaint in this action purports to be based upon federal jurisdiction. Even a cursory reading of the complaint reveals that it does not belong in this Court and that its federal basis is doubtful indeed. The complaint alleges diversity jurisdiction and on the face of the complaint there is no diversity. One count of the complaint alleges jurisdiction under the Clayton Act under extraordinarily doubtful facts, but that apart, the venue of this Court with respect to the individual defendants is improper. The method of personal service upon Mr. Haines, along with the numerous infirmities of the complaint only partially recited above, are being challenged by motions presently in preparation by the undersigned, as well as other of the defendants.

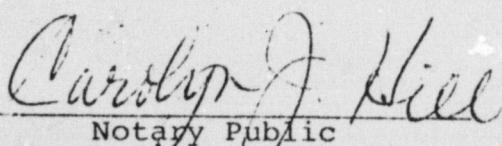
7. On Friday, February 14, 1975, I telephoned the office of United States Attorney in order to ascertain whether Mr. Robinson had indeed attempted to file criminal charges herein and was informed by Assistant United States Attorney, Charles E. Wilson, that Mr. Robinson had been in to see him, that FBI subpoenas were outstanding in connection with the matter, and that my client was a target of the investigation.

8. Under the above circumstances, it appears not only questionable for plaintiff's counsel to have sought an ex parte order to take depositions out of the ordinary course, but it appears in the interest of justice appropriate to stay the conducting of any further discovery by plaintiff pending termination of the criminal investigation initiated by it, and to direct plaintiff's counsel to conduct this litigation

in the courtroom and not in the New York Times, Wall Street Journal and Women's Wear Daily. It is also respectfully requested that the Court grant a protective order against use by plaintiff of the statements and interrogation materials elicited from Mr. Haines after commencement of the action and prior to service of the complaint upon him under the circumstances set forth above. ~~No prior application for this device has been made.~~


ROBERT LAYTON

Sworn to before me this
21st day of February, 1975.


Carolyn J. Hill
Notary Public

CAROLYN J. HILL
Notary Public, State of New York
No. 31-8 1970
Qualified in New York County
Commission Expires March 30, 1976

NEW YORK TIMES

Saturday, February 1, 1975

Grant Charges 3 Aides And Others With Bribery

By ISADORE BARNASH

The W. T. Grant Company, which expects to report a \$175-million loss in the fiscal year ending Thursday, disclosed yesterday that it had discharged its real estate vice-president and two regional real estate managers for alleged conflicts of interest.

The company also said that it filed yesterday a \$6-million civil suit against the three executives, the wife of one, John W. Waits Associates and two shopping center subsidiaries in Louisville and a building contractor. The suit charges kickbacks and bribes that totaled at least \$165,000.

A Grant legal counsel said that criminal indictments would also be sought. The civil suit charged that the defendants conspired to violate the Federal antitrust laws by restricting competition among shopping center developers submitting leases and sites to Grant and also violated a number of penal and business laws of various states.

Checks of as much as \$39,000, a Ford LST station-wagon, a horse trailer, use of a Cadillac El Dorado car and a Ford Pinto station wagon, as well as improvements on the farm of one of the executives are said to have been involved. These were provided by two Waits subsidiaries, the Mid-American Development Corporation and the Centurion Development Corporation, according to the suit.

Those discharged yesterday were John A. Christensen, 48-year old real estate vice president, who earned \$72,000 a year; Mark S. Haines, 36, real estate manager for the Southern region, who earned \$35,470; and Daniel J. Quinlan, 35, real estate manager for the Midwest division, who earned about \$20,000.

Mrs. Mavis Christensen was also named a defendant because, the suit said, she held the deed to a farm adjoining the Christensen home in Madison, Conn., on which improvements were made by the Umbaugh Pole Building Company of Middletown, N. Y. The Umbaugh concern was also named a defendant.

The suit, filed in the United States District Court for the Southern District, seeks an attachment on the property and assets of the three executives and lists in detail checks and other gratuities alleged to have been given the Grant executives.

Commenting on the suit yes-

terday, James G. Kendrick, Grant's chairman, said: "The actions involved here may have contributed to our problems in that some of the store sites selected may not have been in the best interests of the company. We opened more than 400 stores between 1969 and 1974. Besides the site, rental terms may not have been in our best interest. We are now investigating all aspects of our real estate operations."

The three executives were not available for comment yesterday afternoon, while efforts to reach the corporate defendants were unsuccessful.

Fraud Is Increasing Costs to Consumers

Executives' Crime Is Found Rising in Recession

By ISADORE BARMASH

Business kickbacks, bribes and embezzlements are on the rise and the consumer is paying for them, according to Herbert Robinson, a prominent New York lawyer.

Kickbacks, secret investments in supplier companies, conflict-of-interest situations and embezzlement in various forms are rising sharply in a depressed economy, when executives under pressure act illegally or take advantage of "inside" situations in their companies, Mr. Robinson said in a weekend interview.

Mr. Robinson, a partner in Liebman, Eulau, Robinson & Perlman Inc., has several decades of experience prosecuting business frauds. He is currently involved in the W. T. Grant Company's case against three discharged executives accused of taking bribes and against a shopper developer accused of giving them.

Economic Pressure

The incidence of illegality is rising among executives who fear decreasing income in the present economic situation, Mr. Robinson asserted. At the same time, he said, suppliers who are under pressure are themselves enticing industrial



The New York Times
Herbert Robinson in his law offices here last week.

customers to accept "gifts" for favored treatment.

To compensate for this cost, the suppliers are adding anywhere from 2 per cent (in the apparel industry) to as much as 33 1/3 per cent (in the printing industry) to the prices of their products or services. And this is reflected in retail prices that the public pays, the attorney said.

"Payoffs" and conflict-of-interest situations in which there

Continued From Page 39

are illegalities are expected to involve a cost of \$14-billion this year, about 1 per cent of the country's gross national product he said. Thirty years ago, he said, such crimes involved less than \$1-billion.

Fearful of Scandal

"Certainly I do not mean to impugn most businessmen," Mr. Robinson said. "But the problem is that many management are squeamish even today about exposing internal situations because they don't want the breath of scandal to fall upon their companies. But as the recession continues, I think more of them will take action because business crimes inevitably lead to higher costs."

Occasionally almost an entire management can become involved in crime, but more often it is one or more individuals. The attorney told of a number of cases he knew about.

In the Midwest some years ago the president and about six top executives of a metal-fabricating concern set up two dummy companies that served as funnels for 10 per cent kickbacks on raw-material purchases, Mr. Robinson said. The conspiracy was exposed when an operating superintendent had a few drinks one day and called an outside director of the company to complain that he wasn't getting his "fair share" of the payoffs.

Recently a hardware company received an anonymous letter asserting that the con-

cern's merchandising executive was receiving secret "commissions" from a supplier company for placing orders with it. The hardware company's management confronted the executive with the letter. He promptly admitted receiving payments of 1 1/2 per cent on the orders he placed. He also identified six other suppliers who were paying him off.

In one case, Mr. Robinson recounted, an envious neighbor called the employer of a man who suddenly acquired luxuries—an elaborate swimming pool, a \$10,000 imported car and a \$6,000 domestic car. Kickbacks were suspected, and a private investigator found a supplier who admitted giving them.

One of the most complex schemes was developed by a sales executive for a business machine concern who organized his own sales company as a sideline.

Secret Enterprise

"This man used amazing ingenuity in maximizing the revenue he got from his conflict-of-interest involvement," said Mr. Robinson. "He bought new and used machines, sold them to his employer and also bought them for his employer from his own secret company.

And then, in a move he later defended as potentially beneficial to his own employer because it would bring the company more business, he undertook a huge direct-mail printing by using his employer's equipment, stationary and stamps."

NEW YORK TIMES,
FEB. 10, 1975

The executive was eventually dismissed and his assets were attached.

Businessmen who are tempted to commit these and other crimes are, in Mr. Robinson's opinion, "rolling dice against very heavy odds."

The effect on such an executive, when he is caught, can be "catastrophic," Mr. Robinson declared. "He is subject to civil prosecution and conviction, which can lead to a jail term. He will lose his job and find it difficult to get another. His family will be shamed, and he may be stripped of all he owns. Employers can get redress from such executives in the form of recovery of the kickbacks or other payments, return of salary during the period of 'disloyalty' and additional damages if extra costs can be proven by reason of having overpaid or having received shoddy equipment."

EXHIBIT "B"

Grant files \$25 million suit against 3 employes, others

NEW YORK (FNS) — W. T. Grant Co. has filed a \$25,300,000 suit charging that three employes received over \$1 million in bribes in connection with store leases.

The suit, filed in federal court, contends that the employes received secret payments from real estate interests to induce Grant's to lease stores in shopping centers at unreasonably high rentals. The leases, the suit charges, were for the benefit of the defendants and not in Grant's best interests.

Employes named are John A. Christensen, who was real estate vice-president of Grant's, Mark S. Haines and Daniel Quinlan, real estate managers.

Other defendants are John W. Waits and five real estate firms in which he is principal officer —

John W. Waits Associates; J. W. W., Inc.; Centurion Development Corp.; Centurion of Louisiana, Inc.; Mid-America Development; Development Corp. of Mid-America, Inc., and Frontier Development Corp. The suit also names

Rome Diamond added to W. T. Grant's problems Friday by filing a suit charging the retail chain with violating the state's consumer fraud law.

Grant's raised the minimum payment for credit customers

One bank a holdout

NEW YORK (FNS) — W.T. Grant reportedly had approval from 142 of its 143 banks for extension of a \$75 million payment due last Friday.

Deferment of payment to next June 2 was part of a refinancing package outlined by the big retail chain at a meeting with its banks last Jan. 16.

Negotiations with the lone holdout — believed to be a small bank in Maryland — were being conducted over the weekend. Grant's principal banks, which hold \$500 million of \$600 million in short-term loans and all of the \$105 million long-term debt, agreed earlier this month to defer payment of the \$75 million.

The proposed refinancing also provides for extension of maturity date of the entire \$600 million from June 2, 1975, to March 1, 1976, or one year from the signing of the revised agreement.

Unbaugh Pole Building Co., Inc., and 10 John Does.

The Grant employes are also charged with appropriating business opportunities from Grant's to themselves and the corporate defendants.

Grant's charges that Waits, his companies and other unknown defendants paid bribes to Christensen, Haines and Quinlan inducing them to breach their fiduciary obligations to the chain. It also charges that the defendants appropriated business opportunities from Grant's to themselves.

Grant's says the defendants' actions constituted restraint of trade and violated the Sherman Act by making Grant's captive lessee and eliminating competitive leasing opportunities.

Meanwhile, in Montpelier, Vermont Attorney General M. Je-

from 5 to 10 percent of outstanding balance beginning November, 1974, according to Diamond.

The suit seeks to have the increase applied only to items bought after customers were notified and asks for refunds to customers who paid the higher minimum on purchases before the change was announced.

Grant's operates 1,185 stores throughout the country and only seven are located in Vermont. Citing the "severe hardship" to a number of consumers in Vermont, Diamond said he had received from 10 to 12 complaints.

He said that was his concern "not the corporate well being of W. T. Grant. If W. T. Grant, because of their nationwide economic situation, is going to fold, this action alone is not going to be the straw that breaks the camel's back."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
W. T. RANT COMPANY,

75 Civ. 471 (CLB)

: Plaintiff,

: NOTICE OF MOTION
TO DISMISS

-against-

JOHN A. CHRISTENSEN, et al.,

: Defendants.

-----x
S I R S:

PLEASE TAKE NOTICE that upon the affidavit of Mark S. Haines, sworn to the 1st day of March, 1975, the affidavit of Robert Layton, Esq., sworn to the 6th day of March, 1975, the complaint, and all of the proceedings heretofore had herein, the undersigned will move this Court, the Honorable Charles L. Brieant, Jr., presiding, at the United States Courthouse, Foley Square, New York, Room 519, at 2:00 P.M. on the 19th day of March, 1975, for an order pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure, dismissing the action against defendant Mark S. Haines on the grounds that (1) no diversity subject matter jurisdiction exists, (2) process was improperly served and, therefore, the Court lacks jurisdiction of the person of defendant Mark S. Haines, and (3) venue is improper.

Pursuant to order of the Court, answering papers shall

be personally served upon the undersigned no later than
March 17, 1975.

Dated: New York, New York Yours, etc.,
March 6, 1975.

LAYTON and SHERMAN

By Robert Layton
A Member of the Firm

Attorneys for Defendant
Mark S. Haines
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ROBERT METRY, ESQ.
HAMILTON METRY & MILLMAN
Attorneys for Defendant John W. Waits
Suite 400
100 East Liberty Street
Louisville, Kentucky 40202

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

W. T. GRANT COMPANY, :

Plaintiff, : 75 Civ. 471 (CLB)

- against -

JOHN A. CHRISTENSEN, et al.,

AFFIDAVIT

Defendants. :

X

STATE OF GEORGIA)

: ss.:

COUNTY OF FULTON)

MARK S. HAINES, being duly sworn, deposes and says:

1. I am named as a defendant in this lawsuit and I make this affidavit in support of my motion to dismiss the complaint against me on the grounds, among others, that service of process upon me was improperly made.

2. I now reside and have for the last two and one-half years resided in Atlanta, Georgia.

3. Until January 31, 1975 when I was discharged, I was an employee of the plaintiff, W. T. Grant Company, and had my only office at 180 Allen Road, Atlanta, Georgia.

4. I had no office in New York, no secretary in New York, and no telephone extension in New York.

5. On Tuesday, January 28, 1975, I received a message at my office in Atlanta to call the secretary of my superior at Grant, John A. Christensen, about a meeting in New York to be held on Friday, January 31, 1975.

6. When I returned the call, Mr. Christensen's secretary, Mary Foray, told me that a special management meeting had been called either by Mr. Kendrick, the President of Grant, or Mr. Pierson, the Executive Vice President, and that they wanted the real estate department people, including me, to sit in on the meeting. She said that the meeting would be held at Grant's office in New York beginning at 9:00 A.M. on Friday, January 31, 1975. Miss Foray said that she did not know the reason [redacted] for the meeting.

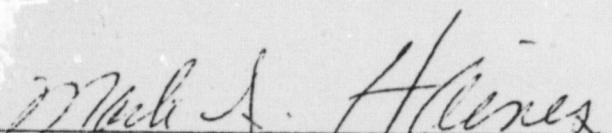
7. On Thursday, January 30, I spoke by telephone with Mr. Christensen who told me that he had been told by Mr. Kendrick that there was to be a "superficial" real estate review at the meeting that had been called for Friday.

8. As directed, I flew from Atlanta to New York and arrived at Grant's office in New York on Friday morning, January 31, 1975. At approximately 8:45 A.M. I, along with other real estate personnel, went to the Board of Directors room. When we arrived, Mr. Kendrick's secretary told us that the scheduled meeting had been cancelled but that we were not to go anywhere.

9. Shortly thereafter, Robert Kelly, Esq., Grant's house counsel, appeared with outside attorneys for the company. These attorneys interrogated me and subjected me to an electronic lie detector test from approximately 9:30 A.M. until 3:05 P.M. when they handed me the summons and complaint in this action. They did not tell me, prior to handing me the summons and complaint, that Grant had already commenced a lawsuit against me.

10. I had no reason to be in New York on Friday, January 31, other than to attend the "meeting" to which I had

been asked to come. Had I known that Grant was instituting a lawsuit against me, I certainly would not have come to New York and I would not have allowed myself to be interrogated at length by Grant's attorneys without even having an opportunity to consult an attorney myself.



MARK S. HAINES

Sworn to before me, this first
day of March, 1975

Anne P. Marshaw
Notary Public

Notary Public, Georgia State of Large
My Commission Expires April 17, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

W. T. GRANT COMPANY,

75 Civ. 471 (CLB)

Plaintiff,

AFFIDAVIT IN
SUPPORT OF
MOTION TO DISMISS

-against-

JOHN A. CHRISTENSEN, et al.,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:)

ROBERT LAYTON, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before this Court, and a member of the firm of Layton and Sherman, attorneys for defendant Mark S. Haines.
2. I make this affidavit for the purpose of placing before the Court certain documentary material relevant to defendant Mark S. Haines' motion to dismiss the complaint, and also to apprise the Court of several events of which I have first-hand knowledge.
3. Attached hereto as exhibits are the following materials:

Exhibit "A" - New York Times Article:
December 15, 1974;
Business Week Article:
October 19, 1974;
Business Week Article:
February 24, 1975

Exhibit "B" - New York Times Article:
February 1, 1975

Exhibit "C" - New York Times Article:
February 10, 1975

Exhibit "D" - Affidavit of Robert Kruger, Esq.
dated January 31, 1975
in support of plaintiff's
application for an order
pursuant to Rule 4. (e).

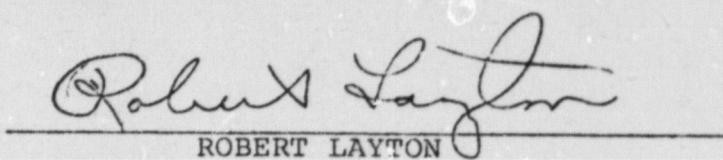
4. On Friday, February 14, 1975, I had a telephone conversation with George E. Wilson, Esq., an Assistant United States Attorney in the Southern District of New York.

Mr. Wilson confirmed that he is in charge of the criminal investigation initiated by Grant. He told me that Mr. Haines is a target of the investigation being conducted by his office and the Federal Bureau of Investigation.

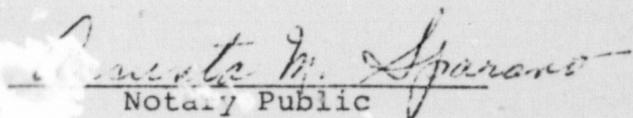
5. On Thursday, February 13, 1975, I called Allan J. Kirschner, Esq., counsel for Grant, to request an extension of Mr. Haines' time to answer or move against the complaint. Mr. Kirschner said that he would consider my request and call me back. Mr. Kirschner did not tell me that his firm was in the process of making an ex parte application to the Court for an order permitting the deposition of Mr. Haines prior to the time permitted by the Federal Rules of Civil Procedure.

Mr. Kirschner did not return my call until Wednesday, February 19, although I had again called his office on Tuesday, February 18. In our telephone conversation on February 19, Mr. Kirschner agreed only to a one-week extension of Mr. Haines' time to move or answer. He failed, however, to disclose that the Court had granted Grant's ex parte application

on February 14, and that his firm had delayed mailing notices
of the expedited depositions until four days later.


ROBERT LAYTON

Sworn to before me this
6th day of March, 1975.


Assunta M. Sparano
Notary Public

ASSUNTA M. SPARANO
Notary Public, State of New York
No. 24-377775
Qualified in Kings County
Commission Expires March 30, 1975

WORLD OF RETAILING

Trouble at W.T. Grant's

By ISADORE BARNASH

After almost 68 years of tranquil growth, the W. T. Grant Company is one of America's largest retail chains—and one of its most troubled.

Some people outside the company are questioning whether it can survive. Grant's top management, however, after a general reorganization this year, says that it has the programs and the support from bankers and suppliers, to demonstrate its survival capacity.

It is only a matter of time, company officers say.

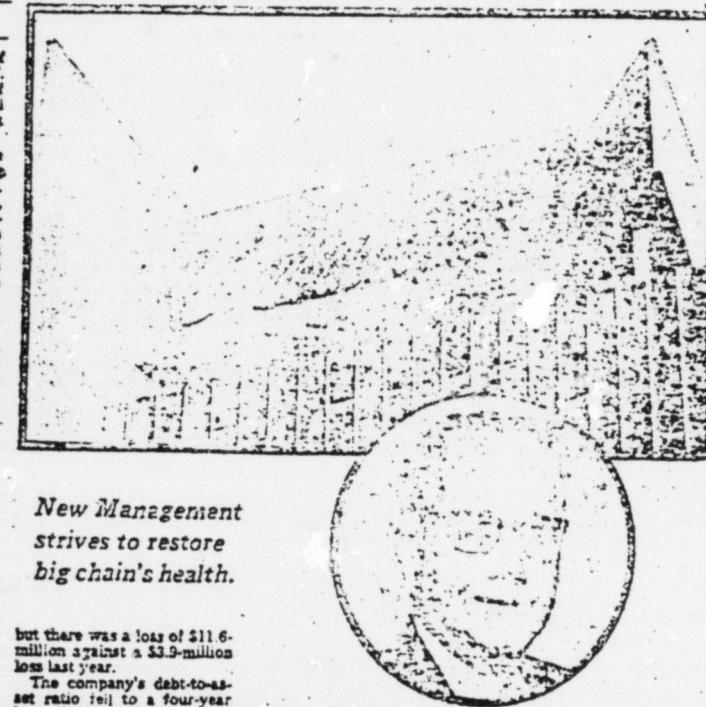
Last week James G. Kenedik, Grant's new president and chairman, in a telephone interview from California where he was visiting Grant stores, said:

"If it weren't for our deliberate attempt to reduce our credit sales to cut our financing costs, we would be showing a sales gain out here. And that's in a bad economy, too."

"We are taking business away from ourselves," he added, "but we will have to live through that if it's been a tremendously traumatic period for all of us but in the long run we'll be better off. As long as the banks and our suppliers support us—and they are—we'll make it."

"We expect to be on a break-even level at the end of our next fiscal year and to be profitable in two to three years." Overexpansion and its inability to digest it, a lack of basic controls and merchandizing discipline, plus a serious amending of the concept of what its goods stand for in the marketplace have cast Grant's and the 78,000 people it employs at present, into a worse-than-situation.

Net income dropped 78 percent in the fiscal year ended Jan. 31 and profits have turned to losses this year. In the nine months through Oct. 31, Grant's losses tripled to \$22.5-million. In the recent third quarter, this dipped less than 1 percent from year-earlier levels.



New Management
strives to restore
big chain's health.

but there was a loss of \$11.6 million against a \$3.9-million loss last year.

The company's debt-to-asset ratio fell to a four-year low of 1.6 in October. But John E. Sundman, financial vice president, said last week that Grant's has obtained \$800-million in short-term financing through June, 1975, with 143 banks and is currently paying its bills in line with existing trade practice.

This may or may not alleviate supplier anxiety but Grant's is conducting meetings with factoring companies, bankers and suppliers to explain the situation directly. Two more win bankers and about 200 of its 8,000 suppliers, are scheduled for next month.

Grant's problems are, in the view of some Wall Street and retailing analysts, attributable to narrow thinking and faulty judgment.

In the mid-nineteen-sixties, when the company was earning about \$40-million after taxes, it mounted an aggressive store-opening program adding 317 in one year alone, 1969-1970. It is doing so, it borrowed short-term in the commercial paper field at a time when interest rates were soaring.

Then, having lowered by one full grade the ratings on Grant's commercial paper, both the National Credit Office-Moody's and Standard and Poor, Inc., dropped the ratings entirely in the spring of 1974.

Also in the nineteen-sixties, management, no doubt inspired by similar moves by the F. W. Woolworth Company and the S. S. Kresge Company, broadened Grant's line of merchandise in the direction of appliances and furniture and shifted to a massive expansion of the credit facilities it offered customers.

But in the process, adding to the timing mishap on borrowing, analysis and other observers feel that the company paid too much attention to expansion and too little to the traditional Grant customer. Would he or she who loyally bought clothes, toys or stationery in the 1,200 stores also buy refrigerators, washing machines and furniture?

As Grant's found itself gagging over its inability to digest some 30-million square feet of new store space in 1972 and 1973, interest rates rose, money tightened and housing starts dwindled.

In the zeal to broaden Grant's appeal, such basic guidelines to business as

EXHIBIT "A"

-152-

checking lines on sales and inventories of staple goods and seasonal lines were dropped.

This meant that Grant's was simply turning its back on the seasonal and non-seasonal staples on which it had built its all decades of success.

As John F. Crowley, merchandising vice president, who was plucked from a post as Pittsburgh regional vice president this year put it:

"We became over-assorted."

still be forced to liquidate. If it should ultimately fail, its insolvency would be the largest in retail history.

But Grant's new top team, headed by Mr. Kenenick, is convinced that a current revamping program, revitalizing "flow control disciplines," reducing the number of separate items sold from 60,000 to 35,000 and updating fashion lines, will create a new Grant's.

"We are going to relate our space directly to sales of items and departments," says

To what extent will the economic slowdown and faltering consumer buying across the country affect Grant's revival efforts? The results of the tough, four-quarter ending in April will be revealing.

Agreeable, but not over-arduous, to financing Grant's short-term needs, a number of banks have insisted on conditioning their loans on having Grant's \$300-million in accounts receivables as collateral. This unusual request has not sat well with many Grant's merchandise suppliers who fear in the case of a worsening of Grant's situation the banks would be in a better position for getting restitution than they will.

How well will Grant's be able to meet the payments on its bank loans and still pay its trade debts?

A \$40-million payment due last Friday was postponed with approval of the banks until Jan. 31, when Grant's can provide new data on its progress. Also waived were a number of restrictive covenants contained in the loan agreements as to net worth and working capital, potential problems in view of Grant's continuing sales declines and the general economy.

The meetings of Grant's management with bankers and suppliers will obviously be vital in either clearing or creating obstacles in Grant's efforts to keep going.

We forgot that 75 to 80 per cent of our business came from 20 per cent of our items and we wound up with colors, sizes and styles no one wanted."

Within the last few weeks, the Morgan Guaranty Trust Company, the lead bank among Grant's lenders, has indicated that it is in the move to support Grant's "all the way."

Trade circles have buzzed with concern that a bankruptcy might drag down many of Grant's small suppliers, landlords and others whose economic vitality depends on the company's survival.

The general concern, of course, reflects what massive waves a company with sales of more than \$1.8-billion would create if it were to become insolvent or, worse

Mr. Crowley. "And we are putting an increasing number of departments such as shoes, sportswear and juvenile wear on electronic data-processing to keep us current on sales and inventories."

Unprofitable stores will be closed, with at least 50 to be shut in the fiscal year beginning Feb. 1, reported Mr. Sundman.

Grant's recent decision to accept bank credit cards to reduce the cost of maintaining some of its own credit operation has already spread to about 1,000 of the 1,180 stores. Initial results are "very good—sales are picking up," Mr. Sundman said.

But—while even stern critics might give the new Grant's team credit for its vigor and candidness—there are a number of unresolved problems:

reluctant maidens," says one source close to the negotiations. "The Federal Reserve pushed for the loan because it didn't want a company its size to go out of business, and without the loan, Grant was technically insolvent."

Pledged as collateral is Grant's stock in Zeller's, Ltd. (50.2%), a retail joint venture in Canada, and its accounts receivable estimated at \$600-million. Not pledged are Grant's inventories of \$440-million and cash to pay its suppliers, which totaled \$37-million, both as of July 31.

The loan, which is to be renegotiated next June, gives Grant working capital for the holiday season, the make-or-break time for retailers.

Kendrick, who headed Zeller's before he took over at Grant on Sept. 3, has established six task forces to study credit operations, overhead costs, organizational structure, the new stores program, the computer payroll, and cash management systems. An outside consultant is also studying Grant's finances on a "blitzkrieg" basis.

Kendrick's main tasks now are to reassure nervous suppliers that the company "has and will continue to have one of the best records in the industry for paying its bills on time" (despite American Credit Indemnity Co.'s recent canceling of Grant's credit insurance policy), and to prune bulging inventories. "We had a heavy inventory buildup that got out of hand," says Kendrick. "We failed to stock staples, which in turn led to an overabundance of slow-selling items."

Aware of criticism describing

Management's main jobs: Reassure suppliers and trim bulging stocks

Grant's merchandising prowess as too "promotion-oriented," and offering "not enough national brands," Kendrick is changing the company's merchandise mix and leadership and will reduce Grant's 71% reliance on private-label goods.

As a further merchandising tool, starting in early November, Grant will begin accepting BankAmericard and Master Charge sales. With rising credit delinquencies, "bank cards are not our salvation," says Sundman. "We may even lose a certain amount of cash sales, but over-all, I think they will attract more and larger sales."

Grant officials, who expect to have 80% of the total annual sales volume on stream by early November, make no predictions on how they will end the year, or when performance will improve. Instead, there is talk of "a tremendous lift in morale around here," says one official, while another likens it to turning around an ocean tanker: "It takes time and patience."

RETAILING

It's get-tough time at W. T. Grant

"We have made some pretty major mistakes, and now we have to improve," says John E. Sundman, financial vice-president of W. T. Grant Co., the country's seventh largest retail chain. "It is a real turnaround situation," he says. Few would disagree.

The 1,172-unit general merchandise chain, demoralized by a 78% decline in profits on \$1.8-billion in sales in 1973, a \$10-million loss for the first half of this year, numerous executive changes, and persistent rumors concerning its credit and longevity, is taking some long-overdue steps to pull itself together.

Like other merchants (page 70), Grant blames its precarious financial position on an aggressive expansion program, high interest rates, price controls, and a switch from a coupon-type credit plan to revolving charges. But the company's new chairman and president, James G. Kendrick, 61, promises "tough, corrective action" to get Grant back into the black.

The credit line. Last week, as part of the "new action," Grant signed a short-term agreement with 143 banks headed by Morgan Guaranty Trust Co. to borrow \$600-million to supplement and replace existing lines of credit. "A credit line can be somewhat of a phantom," explains Sundman. "The banks can ask you at any time not to use it—we needed a legal commitment." With 14 banks doling out approximately \$500-million (three banks are down for nearly \$100-million each) and 129 banks supplying the difference, Grant executives are breathing a bit easier. Not so the banks. "There were a lot of

\$175-million last year

At a recent picture taking session at W. T. Grant's New York City headquarters, a photographer asked the new chairman and chief executive officer, to stand behind a seated group of store executives. "Sure," quipped James G. Kendrick, "I'll stand behind them, if they'll stand behind me."

The remark was not made entirely in jest. Since the previous management was deposed in a director's revolt last August, the 62-year-old Kendrick has been busy courting bankers, reassuring suppliers, and cajoling employees to help him resuscitate the nearly moribund 1,188-store retailing giant. Until his recall, Kendrick, a long-time Grant employee, had been running a Grant subsidiary, Zeller's, Ltd., in Canada, to which he had been exiled by the former management because he questioned its policies.

Kendrick's job is not an easy one. Several years of questionable management, poor merchandising, and internal bickering have congealed to produce humiliating results. The profit-and-loss sheet for 1973 showed a 78% decline in profits on \$1.8-billion in sales, a figure dwarfed only by 1974's gargantuan loss of \$175-million—coming after a \$96-million tax credit on \$1.7-billion in sales. The company, which suspended its dividend last summer for the first time in its 69-year history, is engaged in an 11th hour effort to save the nation's 17th largest retailer from extinction. To cut costs, Kendrick is slashing away. Grant's will close 126 stores this year, and by Apr. 1 trim its payroll from 82,500 to 69,900.

Included in the paring operation will be Grant's credit unit, which company officers admit accounted for 62% of Grant's 1974 losses. Also contributing to the staggering results was a loss of \$24-million for store closing costs, heavy interest charges, and markdowns throughout the chain, as well as a 5% drop in sales.

On top of these problems, Grant filed a suit last week charging that three former employees may have taken what Kendrick describes as "hundreds of thousands of dollars in bribes in connection with store leases." Caught up in the Grant debacle and in varying degrees of jeopardy, are 143 banks, which last December found that the company could not meet its payment schedule on \$600-million in short-term loans and \$100-million in long-term debt. Headed

by Morgan Guaranty, the banks are expected to sign a renegotiated agreement next month. The 14 lead banks, which hold 83% of the outstanding loans, have already agreed.

The new agreement calls for an extension of the maturity date from this June to Mar. 31, 1976, and deferral of payment on the principal until Jan. 30, 1976. In another attempt to provide Grant with breathing room, the lead banks have agreed to roll back the floating interest rate, which ranged from 11% to 13 1/4%, with the difference deferred and accrued until Jan. 30, 1976. The original loan agreement also called for Grant to maintain a consolidated net worth of \$295-million and working capital of \$370-million. Efforts are being made to change this stipulation, since Grant's current net worth is pegged at \$120-million, and working capital at \$185-million.

Little choice. In an attempt to soothe queasy suppliers—many of whom have threatened to ship only COD to Grant—the bankers are now developing a plan to give the chain's suppliers a lien on

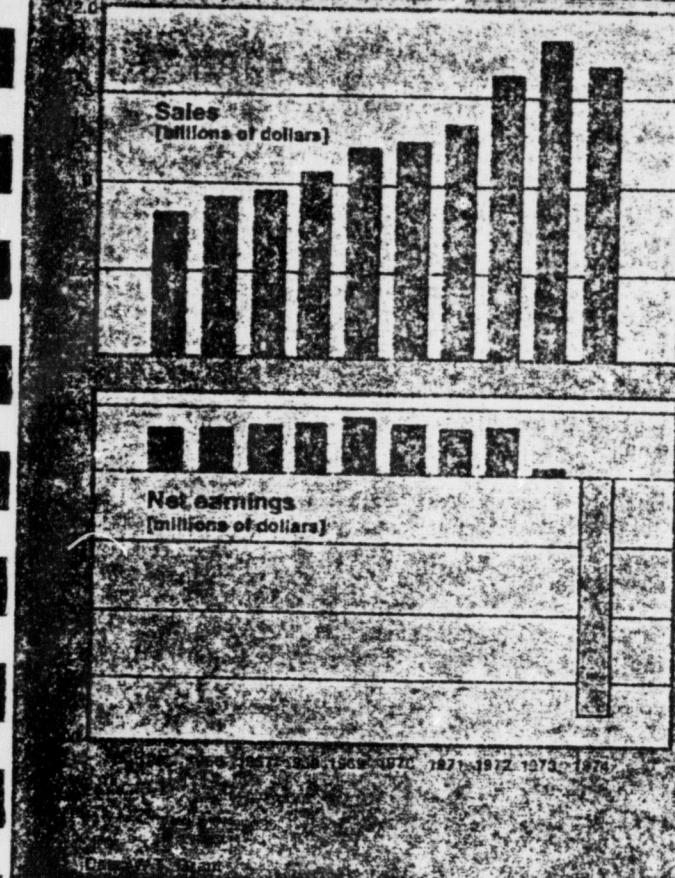
president.

Many of the banks involved in the rescue attempt have deep misgivings about the turn of events and are following along grudgingly. "There was nothing attractive about getting into the deal last year," says Robert F. Stamp, treasurer of Florida National Banks, in Jacksonville, which has \$1-million out to Grant. "The inclusion of 143 banks is just too unwieldy," complains Stamp. He says that his bank is not being kept posted on current happenings and has to contact the lead bank in New York for information. Says another banker: "We have little choice at this point but to comply. There is a real fear that if we let Grant fail it might cause a domino effect." One banker affiliated with one of the 14 lead banks confesses that while he "has a sinking feeling that Grant is going to go down the Penn Central tracks, the banks have so many millions involved that we have little choice but to go along and hope that it flies."

Indeed, says Sundman, "the banks are holding less security than the amount of indebtedness we owe them." He estimates that the banks hold, at the most, \$660-million in collateral for their \$700-million loan in the form of Grant's receivables and Zeller stock. "What this amounts to actually," ex-



Grant will close 126 stores this year, such as this one in Atlanta, and trim its payroll.



plains Sundman, "is that the banks are taking a junior position to the trade and releasing to them, in the form of inventory, at least two to three times the amount of our indebtedness to vendors and suppliers at any single time." Grant currently owes its vendors about \$100-million.

"Of course the banks are pressing Grant to pay its bills on time," says one source close to the negotiations. "They are scared to death that one anxious supplier waiting for his \$2,000 payment will file a Chapter 10 proceeding and ignite the whole sorry business."

Rapid expansion. The "whole sorry business," had its seeds in the middle of the 1960s, when Grant, like other retailers, began to undertake a large-scale capital expansion. "The expansion program started under Louis C. Lustenberger [Grant president from 1959 to 1968], and we did well. We showed a percentage increase every year," says a former Grant research and planning executive. "Profits kept pace with expansion, but then it all came too much too fast." From 1963 to 1973 Grant opened 612 stores and expanded 91 others, with the bulk of the increase starting in 1968 under the guidance of President Richard W. Mayer and Chairman Edward Staley.

"The expansion program placed a

great strain on the physical and human capability of the company to cope with the program," says Kendrick. "These were all large stores we were opening—6-million to 7-million sq. ft. per year—and the expansion of our management organization just did not match the expansion of our stores." Adds a former operations executive: "Our training program couldn't keep up with the explosion of stores, and it didn't take long for the mediocrity to begin to show."

Worse yet, early on Grant seemingly could not make up its mind what kind of store it was. "There was a lot of dissension within the company whether we should go the K mart route or go after the Ward's and Penney position," says a former executive. "Ed Staley and Lou Lustenberger were at loggerheads over the issue, with the upshot being we took a position between the two and that consequently stood for nothing."

On top of that, says Kendrick, "we broadened our merchandise selection excessively, and the resulting inventory problems could not be coped with. The net result of all this was that we were selling stale merchandise in our new stores and the company was reluctant to move in and take the necessary steps to balance inventory by

	Millions of dollars		
	Loans to Grant stores	Loans to Grant Financial	Total
Morgan Guaranty	\$ 67.0	\$ 30.0	\$ 97.0
Chase Manhattan	82.0	15.0	97.0
First Nat'l. City	82.0	15.0	97.0
Manufacturers Hanover	44.3	5.0	49.3
BankAmerica	38.5	10.0	48.5
Continental Illinois	43.5	5.0	48.5
Chemical	30.5	10.0	40.5
Bankers Trust	23.1	10.0	33.1
Marine Midland	24.0	—	24.0
Sanwa Bank	20.0	—	20.0
Charter New York	18.4	—	18.4
Mellon National	18.4	—	18.4
Security Pacific	7.0	—	7.0
Bank of New York	6.1	—	6.1
Seattle First Nat'l.	5.0	—	5.0
Western Bancorp.	4.0	—	4.0
Wells Fargo	3.7	—	3.7
CBT Corp.	3.0	—	3.0
First Nat'l. Holding	1.4	—	1.4
Florida Nat'l. Banks	1.0	—	1.0
Pittsburgh National	1.0	—	1.0
Texas Commerce	1.0	—	1.0
United Virginia Bank	1.0	—	1.0
Virginia Nat'l. Bank	.9	—	.9
First Maryland	.8	—	.8
Arizona Bank	.5	—	.5
First Kentucky Nat'l.	.5	—	.5
All other banks	71.4	—	71.4
Total	\$600.0		
	\$100.0		
	\$700.0		

Robert McNaughton-BW

Date: February 24, 1975

the use of markdowns." What Kendrick means is that store buyers, in a rush of enthusiasm to stock stores much bigger than the normal Grant outlet, bought huge quantities of merchandise. Before they could be moved off the shelves, seasons, styles, and tastes changed. For example, pantsuits suddenly became more popular than skirts, and swim suit styles changed from season to season. One former merchandising executive recalls the "mounds of goods that just sat year to year collecting dust; they had so much stuff just sitting there that they couldn't free up the dollars to do a good seasonal merchandising job."

John F. Crowley, Grant's merchandise vice-president believes that a basic problem was that Grant was emphasizing big-ticket items such as television sets, major appliances, and power tools under its own label, which had a poor consumer recognition level. And Grant never had a chance to establish acceptance for its own brand before it ran into trouble. According to Martin King, sales promotion director, "We made a conscious effort to trade up, but we lacked consistency. We didn't take the natural progressions. We just went ahead and jumped several price ranges."

The new store program began to fal-



N.Y. TIMES WIRE

Kendrick: Letting his competitors know that Grant "is an outlet to be dealt with."

ter, and Grant began a heavy credit promotion in an effort to move the big-ticket merchandise. Says Kendrick: "We went into credit in a big way to get the stores rolling, but there were very little restrictions to speak of, so we ended up with a disastrous credit operation with excessive chargeoffs and bad debts."

In all the criticism of the company, says a former Grant director, the thing the critics miss out on completely is just plain bad management. One analyst, who has just completed a new study of Grant, agrees: "Good solid management would have seen what was happening in the late 1960s and certainly the early 1970s and changed direction. But by then, the management in place (Staley-Mayer) was too finance-oriented."

As the situation began to sour, according to the former director, "Management turned highly authoritarian, with Staley calling all the shots. There was no more listening to what was going on in the field. Management should set policies and let local people adapt them to their own situations. A national sales organization cannot be run like a military operation," he says. Agrees one former senior executive: "Staley ran the whole show, everything was funneled through him."

Stepping down. Staley's considerable influence can be traced to his closeness with founder William T. Grant. Staley

of his power to Staley, who was president from 1952 to 1959. Under several titles he continued to run the company until 1974.

But as early as 1971, seeing the ominous writing on the wall, then director and former president Lustenberger and Raymond H. Fogler, another past president and director tried—without success—to mobilize the outside board members to force a change in the company's direction. But as the deterioration in the company's performance became more and more evident last year, "the outside directors had to become more active if they were going to fulfill their responsibilities as company directors," says a former board member. "Unfortunately, they were too late moving in."

Nevertheless, in a long overdue reorganization, Staley, Mayer, Fogler, and Lustenberger, all "stepped" down from the board last summer. "But it is a pretty safe bet," says a former director, "that Staley's resignation would not have been forthcoming if his old foes didn't leave, too."

In seeking a new chief executive, the outside directors were staunch in their search for an executive with proven merchandising and sales promotion ability. Kendrick, who finally got the nod, had been Lustenberger's candidate to succeed him seven years ago, when he was Grant's first sales vice-president and a director. But he was passed over then, says a former director, "because he had too much of a mind of his own. He simply was not a Staley man."

Planning changes. Now, as head of the chain, Kendrick is seeking to undo the damages and move ahead with a defi-

Crowley: 'We will insist on better quality standards, which we did deviate from'

nite market in mind. Says Kendrick: "We are going to go after the same mass market as our competitors—K mart and Woolco. There is no confusion on that score. We are going to gear ourselves to the price points the mass market buys and wants most. Our pricing is going to be competitive at all times, no matter what the so-called listed retail price is. And we are going to let our competitors know that we are an outlet that has to be dealt with."

The type and quality of merchandise carried is another area due for change. "We're going back to the basic, staple merchandise that Grant originally built its reputation on," says Kendrick, "and that hasn't been given the attention it should have had the last few years."

inflants and children's wear, white goods, and curtains and draperies will be strengthened. "We will insist on better quality standards, which we did deviate from," adds Crowley.

In an effort to flag consumer interest, Grant is looking for a new advertising agency to handle the \$6-million that will be spent on television spots in 35 major markets.

"But all these improvements won't mean a thing unless the stores have a good liquid inventory position," says Kendrick. "We took markdowns like never before this fall, so we could have a good open-to-buy situation and get fresh, new merchandise to match our new sales program."

Streamlining. The company hopes to get down to a core group of 900 stores in the next few years and envisions a sales volume of \$1.5-billion. "With a smaller group of stores and different merchandising, we hope to raise our use of brand-name goods and dollar volume per square foot," says Crowley. About 40% of Grant's volume is now in private label goods, and sales per square foot are running at an abysmal \$38. Grant is closing 60 older stores and 66 newer ones, 40 of which have been operating five years or less.

But it has many long-term leases in effect, running anywhere from 10 years to 20 years on many of the stores due to be closed, and few of them have been able to be subleased, perhaps because many are in bad locations.

Grant's lawsuit against John A. Christensen, its former real estate vice-president, Mark Haines, its Southern real estate manager, and Daniel Quinlan, Midwest real estate manager, alleging kickbacks and bribery, may have something to do with this. Says Kendrick: "Some store sites and rental terms may not have been in our best interest and may have contributed to some of our problems."

Ironically, Grant has been a generous, even lavish, employer. According to a former personnel executive, "Salaries at Grant have always been well above other retailers." As an example he cited the fact that the manager of the Toms River (N.J.) store earned \$83,000 as far back as 1968, and that two buyers, one in curtains and draperies, the other in toys, have made \$100,000. Christensen, before he was fired, earned \$72,000.

But Grant is confident that it can make it. Lately store executives and employees have taken to running around with morale boosting Join Our Family buttons pinned to their lapels. They hope that the banks and the courts will not have to come in and divide up "the family."

MARKETING

- 164 -

Saturday, February 1, 1975

Grant Charges 3 Aides And Others With Bribery

By ISADORE BARNASH

The W. T. Grant Company, which expects to report a \$175-million loss in the fiscal year ending Thursday, disclosed yesterday that it had discharged its real estate vice president and two regional real estate managers for alleged conflicts of interest.

The company also said that it filed yesterday a \$6-million civil suit against the three executives, the wife of one, John W. Waits Associates and two shopping center subsidiaries in Louisville and a building contractor. The suit charges kickbacks and bribes that totaled at least \$165,000.

Checks of as much as \$39,000, 1 Ford LST station-wagon, a horse trailer, use of a Cadillac El Dorado car and a Ford Pinto station wagon, as well as improvements on the farm of one of the executives are said to have been involved. These were provided by two Waits subsidiaries, the Mid-American Development Corporation and the Centurion Development Corporation, according to the suit.

Those discharged yesterday were John A. Christensen, 48-year old real estate vice president, who earned \$72,000 a year; Mark S. Haines, 36, real estate manager for the Southern region, who earned \$35,470; and Daniel J. Quinlan, 35, real estate manager for the Midwest division, who earned about \$20,000.

Mrs. Mavis Christensen was also named a defendant because, the suit said, she held the deed to a farm adjoining the Christensen home in Madison, Conn., on which improvements were made by the Umbaugh Pole Building Company of Middletown, N. Y. The Umbaugh concern was also named a defendant.

The suit, filed in the United States District Court for the Southern District, seeks an attachment on the property and assets of the three executives and lists in detail checks and other gratuities alleged to have been given the Grant executives.

Commenting on the suit yes-

terday, James G. Kendrick, Grant's chairman, said: "The actions involved here may have contributed to our problems in that some of the store sites selected may not have been in the best interests of the company. We opened more than 400 stores between 1969 and 1974. Besides the site, rental terms may not have been in our best interest. We are now investigating all aspects of our real estate operations."

The three executives were not available for comment yesterday afternoon, while efforts to reach the corporate defendants were unsuccessful.

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

P. J. GAY COMPANY, : 75 Civ.

Plaintiff, : AFFIDAVIT

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business as
JOHN W. WAITS ASSOCIATES, JWW,
INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF LOUISIANA,
INC., MID-AMERICA DEVELOPMENT,
DEVELOPMENT CORPORATION OF MID-
AMERICA, INC., UMBAUGH POLE BUILDING
COMPANY, INC., also known as
UMBAUGH CO., FRONTIER DEVELOPMENT
CORPORATION, JOHN DOES 1 THROUGH
X, the names being fictitious, the
true names of said defendants
being unknown to plaintiff at the
present time,

Defendants. :

X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT KRUGER, being duly sworn, deposes and says:

1. I am associated with Liebman, Eulau, Robinson & Perlman, attorneys for plaintiff, am admitted to practice before this Court and submit this affidavit in support of plaintiff's application for an order pursuant to Rule 4(e), permitting Herbert Robinson, Julian S. Perlman, Allan J. Kirschner, Joseph Stone, Robert Kruger, Lawrence M. Rosenstock, Jeffrey I. Klein

EXHIBIT "D"

Def. In-Dep't Office

and Wendy Sawyer to serve process in this action upon defendants John A. Christensen ("Christensen"), Mavis Christensen, Mark S. Haines ("Haines"), Daniel Quinlan ("Quinlan"), John W. Waits ("Waits") and Umbaugh Pole Building Company, Inc. ("Umbaugh"), rather than having the United States Marshal serve process upon said defendants. All of the persons for whom authorization is sought are over the age of 18 years and are not parties to this action.

2. Christensen and Mavis Christensen are residents of Connecticut, Haines is a resident of Georgia, Quinlan is a resident of Texas, Waits is a resident of Kentucky and Umbaugh New York Corporation.

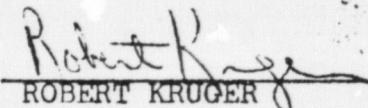
3. Christensen, Haines and Quinlan are all high level employees of plaintiff; all are employed in plaintiff's real estate department. Christensen is plaintiff's Real Estate Vice President; Haines is a Real Estate Regional Manager and Quinlan is a real estate negotiator. All three are charged, in plaintiff's complaint, with accepting bribes and kickbacks from Waits and from corporations dominated by Waits, all of which are named defendants in this action. Mavis Christensen is alleged to have participated in the frauds as set forth in the complaint. Umbaugh is alleged to have made bribes and kickbacks to said employees of plaintiff.

4. Christensen, Haines and Quinlan are to arrive this morning at plaintiff's executive offices for a real estate conference. When confronted with plaintiff's allegations, they will undoubtedly leave New York as quickly as possible, take steps to secrete their illgotten gains and cover their tracks. Simultaneously with the service of process, all three defendants will be served with an order to show cause, containing, if granted, a temporary restraining order, to attach their property and enjoin the transfer of their property.

5. Mavis Christensen, Waits and Umbaugh will, when apprised of plaintiff's action, will also attempt to cover their tracks and transfer their property, to the extent possible.

6. In order to serve Christensen, Haines and Quinlan in New York, and to prevent the transfer of the property of these defendants, plaintiff seeks leave to serve them by the persons named in this application.

WHEREFORE, plaintiff respectfully requests that its application be granted in all respects.


ROBERT KRUGER

Sworn to before me this

31 day of January, 1975.
Jan 31, 1975

LAWRENCE M. ROSENSTOCK
Notary Public, State of New York
No. 31-8657065
Qualified in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) : ss.:
)

ASSUNTA M. SPARANO, being duly sworn, deposes and says:

1. I am not a party to this action, over 18 years of age, and reside in Brooklyn, New York.

2. On March 6, 1975, I served the within Notice of Motion to Dismiss and Affidavits and Defendant Haines' Memorandum of Law in Support of his Motion to Dismiss the Complaint upon the following:

Edwyn Silberling, Esq.
Attorney for Defendant Daniel Quinlan
200 Park Avenue
New York, N. Y. 10017

Gifford, Woody, Carter & Hays, Esqs.
Attorneys for Defendant Umbaugh Pole
Building Company, Inc.
14 Wall Street
New York, N. Y. 10005

the addresses designated by said attorneys for that purpose by depositing same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

3. On March 7, 1975, I served the same motion papers upon Robert Metry, Esq., of Hamilton Metry & Millman, Attorneys for Defendant John W. Waits, c/o David P. Steinmann, 1350 Avenue of the Americas, New York, N. Y. 10019, in the same manner as described in paragraph 2 above.

4. On March 6, 1975, I served copies of the same motion papers on Anderson, Russell, Kill & Olick, P.C., Attorneys for Defendants John A. Christensen and Mavis Christensen, 630 Fifth Avenue, New York, N. Y. 10020, by personally delivering a copy of said motion papers to a messenger of said attorneys sent to receive said papers.

Sworn to before me this
7th day of March, 1975.

Assunta M. Sparano
ASSUNTA M. SPARANO

Carolyn J. Hill
Notary Public

CAROLYN J. HILL
Notary Public, State of New York
No. 01-0000000
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
W. T. GRANT COMPANY,

: Plaintiff,

-against- : 75 Civ. 471 (CLB)

JOHN A. CHRISTENSEN, et al., : NOTICE OF MOTION
: Defendants.

-----x
PLEASE TAKE NOTICE that upon the affidavit of Mark S. Haines, sworn to the 24th day of March, 1975, and all of the proceedings had heretofore herein, the undersigned will move this Court, the Hon. Charles L. Brieant presiding, at the United States District Courthouse, Foley Square, New York, in Room 607-L, at 9:30 A.M. or as soon thereafter as counsel can be heard on the 7th day of April, 1975, for an order dismissing the action against defendant Mark S. Haines, or, in the alternative, disqualifying the firm of Liebman, Eulau, Robinson & Perlman from further representing plaintiff in this action; requiring Messrs. Liebman, Eulau, Robinson & Perlman to deliver to counsel for defendant Mark S. Haines all tapes, notes, records or other documents relating to the interrogation of defendant Mark S. Haines conducted by Messrs. Liebman, Eulau, Robinson & Perlman and/or employees or agents of plaintiff on January 31, 1975; enjoining Messrs. Liebman, Eulau, Robinson & Perlman from conveying or disclosing to successor counsel any information derived from said interrogation; enjoining plaintiff from making any use whatsoever of said information; and enjoining any officer,

employee or agent of plaintiff who has had access to said information fr. any participation in the conduct of this litigation.

The grounds for this motion are that the actions of Messrs. Liebman, Eulau, Robinson & Perlman and Robert J. Kelly, Esq., house counsel for plaintiff, violated Disciplinary Rule 7-104 (A) of Canon 7 of the Code of Professional Responsibility and have irreparably injured the rights of defendant Mark S. Haines.

Dated: New York, New York
March 26, 1975.

Yours etc.,

LAYTON and SHERMAN
Attorneys for Defendant
Mark S. Haines

By Robert Layton
A Member of The Firm

Office & P. O. Address
50 Rockefeller Plaza
New York, N. Y. 10020

(212) 586-4300

TO:

LIEBMAN, EULAU, ROBINSON & PERLMAN
Attorneys for Plaintiff
32 East 51st Street
New York, New York 10022

ANDERSON, RUSSELL, KILL, OLICK, P.C.
Attorneys for Defendants John A.
Christensen and Mavis Christensen
630 Fifth Avenue
New York, New York 10020

EDWYN SILBERLING, ESQ.
Attorney for Defendant Daniel Quinnlan
200 Park Avenue
New York, New York 10017

GIFFORD, WOODY, CARTER & HAYS, ESQS.
Attorneys for Defendant Umbaugh Pole
Building Company, Inc.
14 Wall Street
New York, New York 10005

ROBERT METRY, ESQ.
HAMILTON, METRY & MILLMAN
Attorneys for Defendant John W. Waits
Suite 400
100 East Liberty Street
Louisville, Kentucky 40202

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

W. T. GRANT COMPANY,

Plaintiff,

75 Civ. 471 (CLB)

-against-

AFFIDAVIT

JOHN A. CHRISTENSEN, et al.,

Defendants.

-----x

STATE OF GEORGIA)
: ss.:
COUNTY OF FULTON)

MARK S. HAINES, being duly sworn, deposes and says:

1. I am named as a defendant in this lawsuit and make this affidavit in support of a motion to dismiss the complaint in this suit against me, or, in the alternative, to disqualify the law firm of Liebman, Eulau, Robinson & Perlman from representing the plaintiff herein.

2. I now reside and have for the last two and one-half years resided in Atlanta, Georgia. Until January 31, 1975, I was an employee of the plaintiff, W. T. Grant Company ("Grant"). My only office of employment at Grant was located at 180 Allen Road, Atlanta, Georgia.

3. As set forth fully in my affidavit herein, sworn to March 1, 1975, I was notified on Tuesday, January 28, 1975 about a meeting to be held in New York at the Grant offices on January 31, 1975. I was informed that the meeting was to be a

special management meeting at which Grant management wanted the Real Estate Department people to be present. I was asked to come to New York for that meeting and to be present at 9:00 A.M. on Friday, January 31, 1975. My superior, Mr. John A. Christensen, had informed me on January 30th that he had been told that there was to be a "superficial" real estate review at the meeting.

4. Upon my arrival at the Grant offices, at approximately 8:45 A.M., I, along with other real estate personnel, were directed to the Board of Directors room. Upon our arrival there, the secretary to Mr. Kendrick, who is the President of Grant, informed us that the meeting had been cancelled, but that we were not to go anywhere. We did nothing but wait for approximately forty-five minutes during the course of which some of the real estate personnel telephoned their offices in other parts of the country to get their phone messages.

5. Somewhere between 9:30 A.M. and 10:00 A.M., Robert J. Kelly, Esq., a Grant Vice-President and house counsel, appeared with a number of attorneys from the firm of Liebman, Eulau, Robinson & Perlman (the "Liebman firm"). Also arriving in the room at that time were Nicholas Romagnoli, a Grant real estate attorney, and James Dunn, the chief Grant real estate attorney. All of these people seemed to be waiting for some outside information before proceeding with whatever they had in mind. At some time between 9:30 A.M. and 10:00 A.M., they appeared to receive that information and commenced their proceedings.

Mr. Kelly and Mr. Allan Kirschner, a member of the Liebman firm. These two gentlemen took me into a separate office where I was interrogated from approximately 10:00 A.M. until 3:05 PM in the afternoon.

6. At the outset Mr. Kirschner stated that they had some matters that they wanted to discuss with me concerning business at Grant's and that they hoped that the answers I would give them could "clear the entire matter up". Mr. Kirschner clearly and distinctly conveyed to me the thought that if my answers were in some way satisfactory to him, business would proceed as usual. Mr. Kirschner told me that he could either take notes or that he could use a tape recorder and asked me if I minded if he used the tape recorder. I told him that it made no difference to me. Mr. Kelly did not interrogate me, but he was present during the interrogation by Mr. Kirschner.

7. The entire interrogation by Mr. Kirschner was tape recorded to my best belief. The questions all related to the matters which have been made the subject of the instant lawsuit. They related at great length to checks which were shown to me, to documents which were shown to me, all of which I have later learned had already been annexed to a motion for orders of attachment and preliminary injunction, all on file in this action.

8. At some point in the course of the interrogation by Mr. Kirschner, he handed me a legal document which he said was an authorization or a waiver by me for him or Grant to

I did not exactly understand the nature of the document. He told me that it was alright for me to sign it. I told him that I wanted to have an attorney advise me before signing any such document.

9. Mr. Kirschner told me that I did not need an attorney in connection with signing that document and that if I needed an attorney he would tell me that. Another document was presented to me concerning my account at various department stores, such as Macy's, Saks and maybe another one. He also told me that if I didn't sign these papers they could get the information anyway. I thereupon proceeded to sign the documents. I recall that these documents were notarized by Mr. Kelly. I was not given copies of any of these documents and to this date I do not know exactly what the documents were or what has been done with them or what inquiry into my personal affairs has been made as a result of having signed them.

10. At some later point in the interrogation, Mr. Kirschner told me that they wanted me to take an electronic polygraph ("lie detector") test. He told me that I could refuse to take the test. The implication, however, was that if I refused to take the test, this could have unfortunate consequences for me in respect to my relationship with Grant. I agreed to take the test.

11. It was administered to me in another room by a gentleman from an outside independent testing organization. He asked me a number of questions relating to the issues now in

this case and during the course of administration of the test I became friendly with him. Due to stress of the circumstances, I cannot remember the name of his company or his name, but I specifically recall that he told me that according to his machine I was telling the truth and that he would report this to Grant. I recall being relieved on his telling me that information. I recall him also telling me that some of the questions which the Grant people asked him to put to me related to my intentions or of my state of mind and he complained to me that his machine was not designed for that purpose and that it only worked with respect to the issue of whether I was being truthful at the time I was answering specific questions. Upon finishing the polygraph test, I was taken back into a different room where only Mr. Kirschner was present. This was approximately 2:00 P.M. Since during the course of the day we never had lunch, I asked if I could have a coke since I had not eaten since breakfast. I did not know what was transpiring with any other real estate personnel. Mr. Kirschner started going over the same material again. It appeared to me that he was stalling for time. He waited until about 3:00 P.M., when he asked me to come into a fourth office where another attorney from his firm was present, whose name I cannot recall. There, at approximately 3:05 P.M., Mr. Kirschner handed me a copy of the Summons and Complaint and the Order to Show cause in the action and asked me to sign a document in connection with it.

12. This was the first time that I had any information that Grant had that morning commenced a lawsuit against me. When Mr. Kirschner presented me with a piece of paper to sign,

once again I said that I thought I needed an attorney before signing the piece of paper. He told me that I did not need an attorney to sign the piece of paper, that it was just an admission that I received the legal papers, and that if I had to have an attorney he would have told me that.

13. I had never been told prior to 3:05 P.M. that a lawsuit had been commenced against me by Grant or that Grant had already sought an attachment against my assets or properties in the amount of \$274,495, or that Grant had already requested a Federal judge to grant a temporary restraining order against me.

14. During the course of the events described above that took place on January 31, 1975, I was continually given the impression by Messrs. Kirschner and Kelly that my continued cooperation, statements, admissions, responses, subjection to the lie detector test, all were in my best interest in continuing my employment with Grant and that the above procedures and information were required simply to clear up a potential misunderstanding.

15. I was never told that I had a right to have an attorney present on my behalf to advise me or to represent my interests since I had already been sued for \$15,000,000. I was never told that the tape recording was going to be turned over to a United States Attorney, which I have reason to believe later took place. Indeed, I was informed on at least two occasions that I had no need to have an attorney present.

16. I am not an attorney and have had no legal training. Had I known that Grant had already instituted a substantial lawsuit against me, was seeking to attach my assets, and had already decided to fire me, I certainly would never have participated in the interrogation of January 31, 1975, would have immediately retained an attorney to represent me, and would not have signed whatever documents I did sign on that day.

17. Upon handing me the court papers, Mr. Kirschner did not tell me that I was fired; he simply asked me to go to see Mr. John LaPlante, the Personnel Vice-President of Grant. Mr. LaPlante informed me that I had been fired and gave me some forms to fill out with respect to my pension, group insurance contributions and cancellation of stock option rights. It was apparent to me that these had already been prepared and the decision to fire me had been made prior to January 31, 1975. As is evident from the voluminous court papers filed on the morning of January 31, 1975, these had been in preparation for some time previously, all of them including me as a principal defendant and some of them seeking specific ex parte relief against me.

18. Under the above circumstances, I am informed that my rights were substantially prejudiced on that day by the conduct of Grant and its attorneys and I respectfully request that the relief sought be granted.

Sworn to before me this
14th day of March, 1975

Mark J. Almire

MARK S. HAINES

Notary Public

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) : ss.:

ASSUNTA M. SPARANO, being duly sworn, deposes and says:

That deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York; that on the 27th day of March, 1975, deponent served the within Notice of Motion with Affidavit of Mark S. Haines and Memorandum in Support of Defendant Haines' Motion Dismissing Him from the Case or, in the Alternative, Disqualifying the Firm of Liebman, Eulau, Robinson & Perlman from Representing the Plaintiff upon:

ANDERSON, RUSSELL, KILL & OLICK, P.C.
Attorneys for Defendants John A.
Christensen and Mavis Christensen
630 Fifth Avenue
New York, New York 10020

EDWYN SILBERLING, ESQ.
Attorney for Defendant Daniel Quinlan
200 Park Avenue
New York, New York 10017

GIFFORD, WOODY, CARTER & HAYS, ESQS.
Attorneys for Defendant Umbaugh Pole
Building Company, Inc.
14 Wall Street
New York, N. Y. 10005

ROBERT METRY, ESQ. By service to Local Counsel:
HAMILTON, METRY & MILLMAN David P. Steinmann, Esq.
Attorneys for Defendant John W. Waits/Ferziger, Wohl,
Suite 400 Finkelstein & Steinmann
100 East Liberty Street 1350 6th Avenue
Louisville, Kentucky 40202 New York, N. Y. 10019

the addresses designated by said attorneys for that purpose by depositing the same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Sworn to before me this

27th day of March, 1975.

Carolyn J. Hines
Notary Public

CAROLYN J. HINES
Notary Public, State of New York
Reg. No. 100-1000
Clerk of Kings County
Certified Copy, 19 March 1976

Assunta M. Sparano
ASSUNTA M. SPARANO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

W. T. GRANT COMPANY,

Plaintiff,

75 Civ. 471 (CLB)

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business
as JOHN W. WAITS ASSOCIATES,
JWW, INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF
LOUISIANA, INC., MID-AMERICA
DEVELOPMENT, DEVELOPMENT
CORPORATION OF MID-AMERICA, INC.,
UMBAUGH POLE BUILDING COMPANY,
INC., also known as UMBAUGH CO.,
FRONTIER DEVELOPMENT CORPORATION,
JOHN DOES I THROUGH X, the names
being fictitious, the true names
of said defendants being unknown
to plaintiff at the present time,

AFFIDAVIT IN
OPPOSITION TO
HAINES' MOTION

1 of 5

Defendants.

-----X

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

JAMES G. KENDRICK, being duly sworn, deposes and says:

1. I am Chairman of the Board and President of W. T.
Grant Company (Grant) and am fully familiar with the facts
recited in this affidavit which is submitted in opposition to
the motion of defendant Haines to dismiss this action against
him or to disqualify our counsel in this matter.

3/26/75
Haines
182 Part

2. On Monday, January 27, 1975, I held a meeting of Grant's Management Committee, together with a number of executives in our Real Estate Department to discuss retention and disposition of various stores. My judgment as to the results of that meeting were so favorable that on January 28, 1975 I called another management committee meeting for Friday, January 31, 1975 this time including all of the top executives of the Real Estate Department. The main purpose of such meeting was to review all projected store closings and to seek the advice of my real estate people regarding the viability of some of the smaller stores in order to avoid closing them. I contemplated that we might set up a program to determine which stores to try to preserve and how best to accomplish that end. I should note here that Fridays were the usual meeting days for the Real Estate Committee and that in this particular instance January 31, 1975 coincided with the close of Grant's fiscal year. Annexed hereto as Exhibit 1 is a copy of the call for said meeting.

3. Annexed hereto as Exhibits 2 and 3 are copies of my diary entries which I keep in the regular course of my business on behalf of Grant, which include the meeting of January 27, 1975 and the meeting of January 31, 1975. My January 31st notation reads as follows:

"Special meeting
re: new approach
to store closings
Christensen & Reg Neg
& Mgt Comm"

(spelled out, this notation reads as follows:

"Special meeting
re: new approach
to store closings
Christensen & Regional Negotiators
& Management Committee")

4. I have examined Mr. Haines affidavit and unqualifiedly state that his accusation that the meeting was set up to "lure" him and others into New York for service of process upon them is untrue.

5. When Mr. Robinson learned of this meeting he suggested to Robert J. Kelly, Esq., Vice President and General Counsel of Grant and me that such meeting presented an excellent opportunity for Grant to interview the entire Real Estate Department simultaneously, thus avoiding the possibility that two or more executives would be able to develop in conjunction with each other any untrue recital as to their receipt of secret payments from shopping center developers and the like. This was not a case where Grant tailored its business operations to the start of a law suit.

6. Although Mr. Haines suggests that he took the polygraph examination in order to keep his position, it should be

noted that two real estate negotiators refused to take a polygraph examination and that both are still employed by Grant.

7. My attention had been directed to the statement by Mr. Haines' counsel who has no personal knowledge of the fact (transcript of argument March 19, 1975, pages 43 to 44), denying "one hundred percent" (page 44, line 2), Mr. Kirschner's statement that the defendant employees came to New York, presented leases to the screening committee and urged approval of said leases. I have caused an examination to be made of Mr. Haines travel and expense records for the period from January 16, 1973 to December 18, 1974. Such records show that Mr. Haines was in New York on Grant business on at least thirty-seven days, on at least twenty-eight separate occasions, during that time. Since his performance of his duties for the Grant related only to our real estate, it is obvious that he was in New York with reference to Grant's leases at those times.

8. I should further like to respond to the comments made about reports which appeared in the public press. In the late afternoon of January 31, 1975, I made a statement to a reporter from the New York Times concerning the termination

of Grant's employment of its former real estate vice president and two real estate negotiators. I felt it incumbent upon me to make this statement in order to avoid misunderstanding by our employees, stockholders, suppliers and bankers who might have misunderstood this development as a further deterioration of Grant's difficult financial condition which has been a matter of common knowledge.

WHEREFORE, I respectfully submit that defendant Haines' motion be denied in all respects.

James G. Kendrick

JAMES G. KENDRICK

Sworn to before me this
9th day of April, 1975.

Edward J. Waite Jr.

EDWARD J. WAITE
Notary Public, State of New York
No. 314776107
Qualified in New York County
Commission Expires June 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

W. T. GRANT COMPANY,

Plaintiff,

75 Civ. 471 (CLB)

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business
as JOHN W. WAITS ASSOCIATES,
JWW, INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF
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CORPORATION OF MID-AMERICA, INC.,
UMBAUGH POLE BUILDING COMPANY,
INC., also known as UMBAUGH CO.,
FRONTIER DEVELOPMENT CORPORATION,
JOHN DOES I THROUGH X, the names
being fictitious, the true names
of said defendants being unknown
to plaintiff at the present time,

AFFIDAVIT IN
OPPOSITION TO
HAINES' MOTION

2 of 5

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK)

HALE DETWEILER, being duly sworn, deposes and says:

1. I am a polygraph examiner employed by Management Safeguards, Inc., 2 Park Avenue, New York, New York, and am fully familiar with the facts received in this affidavit. I make this affidavit to set forth the facts concerning my interview and polygraph examination of Mark S. Haines.

2. On January 31, 1975, at approximately 10:00 a.m. I met with Mr. Allan Kirschner, Attorney at Law, member of the firm of Liebman, Eulau, Robinson & Perlman of New York City, New York. This meeting occurred in the office of W. T. Grant Company (Grant), New York City, New York. Mr. Kirschner asked me to administer a polygraph examination to a Mr. Mark S. Haines, (Haines) who was then employed by Grant in its Real Estate Department as a District Manager for the Southern Region. Mr. Kirschner stated that the issues to be resolved were Haines' degree of alleged involvement with a John Waits of Atlanta, Georgia and to determine the various amounts of money Haines received from Waits, as well as whether Waits received preferential treatment from Haines regarding the awarding of contracts for potential sites for W. T. Grant stores in various shopping centers. Specific question formulation was left to my discretion as a polygraph examiner and at no time during my discussion with Mr. Kirschner did Mr. Kirschner furnish the questions to be asked.

3. On January 31, 1975, at 10:25 a.m., I interviewed Haines in the office of Grant. During the initial part of the interview (referred to as the pre-test interview) basic information regarding Haines was obtained. This information included the proper spelling of his name, his home address, date of birth

and period of employment with Grant, including his actual position and the nature of his duties. During this pre-test interview specific areas regarding Haines' alleged involvement with John Waits was covered in detail. During this pre-test interview, Haines was concerned as to the nature of the questions to be asked of him during the instrumental portion of the polygraph examination. I recall telling him that I would only ask questions regarding specific issues and assured him that I would not ask any type of question which would relate to his intentions regarding deals with Mr. Waits. I advised him that the polygraph was only effective in the areas of specific issues when asking questions regarding specific facts. Haines stated that the fact that only specific questions would be asked put his mind at ease. He stated that he had been asked questions by Grant officials regarding his state of mind or his intentions I stated that I would only ask questions that could be answered either YES or NO relating to specific issues.

4. During this pre-test interview, Haines stated that as he looked back in retrospect regarding Mr. Waits, being totally honest with himself, he would have to admit that he used Mr. Waits as a method of obtaining money for his own personal better-

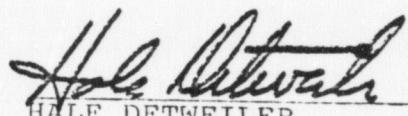
ment. He stated that Mr. Waits no doubt had the feeling that by loaning him the money it would facilitate preferential treatment in the selection of store locations for Grant.

5. Just prior to the instrumental polygraph examination, I prepared a polygraph agreement statement and showed it to Haines who read and signed it. The agreement contains various provisions including the statement that the individual voluntarily agreed to submit to the polygraph examination, that the methods and techniques of the examination were explained to the individual prior to the examination, that no duress, coercion, promise or reward of immunity was made to the subject, and that the subject has been advised of his rights to consult an attorney before taking the examination. A copy of such agreement is annexed hereto as Exhibit 4.

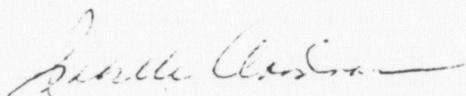
6. After Haines signed the polygraph agreement, each question that I intended to ask Mr. Haines during the instrumental polygraph examination was thoroughly reviewed with him. The questions were reviewed word for word precisely the way they would be asked while he was taking the polygraph. I instructed Haines that if he objected to the phraseology of any of the questions or if there was any question which he could not truthfully answer either YES or NO, the question would be revised to his satisfaction. Haines did not object to the phrasing of any

question, indicating to me that he understood the content of each question and revision was not needed.

7. The polygraph examination of Haines was concluded at 1:55 P.M. whereupon I thanked Mr. Haines for the cooperation he had extended to me during the interview and examination.


Hale Detweiler

Sworn to before me this
10th day of April, 1975.



ISABELLE GOODMAN
Notary Public, State of New York
No. 41-5591250 Queens County
Certificate Filed in New York County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

W. T. GRANT COMPANY,

75 Civ. 471 (CLB)

Plaintiff,

-against-

JOHN A. CHRISTENSEN, MAVIS
CHRISTENSEN, MARK S. HAINES,
DANIEL QUINLAN, JOHN W. WAITS,
JOHN W. WAITS, doing business
as JOHN W. WAITS ASSOCIATES,
JWW, INC., CENTURION DEVELOPMENT
CORPORATION, CENTURION OF
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CORPORATION OF MID-AMERICA, INC.,
UMBAUGH POLE BUILDING COMPANY,
INC., also known as UMBAUGH CO.,
FRONTIER DEVELOPMENT CORPORATION,
JOHN DOES I THROUGH X, the names
being fictitious, the true names
of said defendants being unknown
to plaintiff at the present time,

AFFIDAVIT IN
OPPOSITION TO
DEFENDANT HAINES'
MOTION TO DISMISS

3 of 5

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

HERBERT ROBINSON, being duly sworn, deposes and says:

1. I am a senior partner in the firm of Liebman, Eulau, Robinson & Perlman and am fully familiar with the facts recited in this affidavit which is submitted in opposition to the motion of defendant Mark S. Haines (Haines).

2. Haines is in error with respect to many of his alleged statements of fact, his accusations and his unfounded assumptions. During the week of January 20, 1975 I and other lawyers in my firm had been preparing a complaint under the antitrust laws, together with an order to show cause and supporting papers for an order of attachment and other related relief against the assets of a number of defendants.

3. When I learned that Mr. Kendrick had called a meeting of the Management Committee and all of the top real estate executives for January 31, 1975, I directed my firm to have all papers ready by that date. The pressure was so great that I had to divert the services of one partner and several associates, who had not otherwise been working on this case, to the interviews of January 31st with only the most cursory and superficial briefing as to the facts and the approach that they should take in interviewing the real estate executives. Until January 29th or January 30th, 1975, only myself, my partner Allan J. Kirschner and one associate, Robert Kruger Esq. were actively working on this matter. Grant, for its part, had to call upon at least two company executives who, to the best of my knowledge, had no prior information as to this case and neither of whom I have met to this day despite the fact that I have been in overall charge of this litigation.

4. Illustrative of the pressures upon us are the fact that I left my office at 11:58 p.m. On January 30, 1975, my secretary Francine Tama left at 12:45 a.m. on January 31, 1975; and Mr. Kirschner, Mr. Kruger and Lawrence M. Rosenstock, Esq., another associate, left at 1:30 a.m. on January 31, 1975.

5. Until the very last moment, neither Grant management nor my firm had fully resolved how the meeting with the real estate executives should proceed. We discussed the possibility that Mr. Kendrick should address all of said executives simultaneously, inform them that certain data had come to light that raised questions as to the integrity of at least some of them, that the company wanted to get all of the facts and, therefore, called upon everyone in the room to speak fully and frankly with respect to any possible questionable transactions that they had had with real estate operators, sub-lessees and others. We also discussed separate interviews with each executive so that they could not try to develop a consistent, even though conceivably false, story, as well as to minimize identification of clearly suspect wrong doers to those concerning whom we had no objective adverse data whatsoever. One

reason that I favored the latter position was that the Grant executives and I contemplated the probability that at least one of the three employee defendants (who were later served) would in fact make the full and frank disclosure that we desired and thus would not be served with process. Information received from outside the company, as well as the general attitude within the company, was very favorably inclined to that executive and we were very hopeful that in the clinch he would speak up and assist Grant in getting the fullest possible details as to his and others relationships with developers. Unfortunately, this did not come to pass.

6. Even then, we did not know whether process would in fact be served on anyone that day. If there were a significant indication of revelation of the true facts, process would not have been served on any employee making such disclosure.

7. The January 31, 1975 meeting was not arranged to lure any executive into New York for purposes of service of process. We were then and are now firmly of the opinion that the anti-trust laws are applicable, that acts violative of the antitrust laws were perpetrated by all of the defendants in New York, that the cause of action arose in New York, and that we had full nationwide jurisdiction for service of process, plus venue in New York. Moreover, by virtue of diversity, we could

have served any defendant wherever he was found. Had we resorted to the New York courts, no documents would have been filed in court prior to service of process. Because we intended to utilize the Federal courts, we did file the complaint in this Court on the morning of January 31, 1975. However, service upon Haines was not made until after the interviews with him were concluded.

8. However, it is my understanding that such filing in and of itself is not sufficient to set the judicial wheels in motion. One could refrain from instructing the United States Marshal to serve process; the filing of the complaint does not in and of itself activate the service of process. Therefore, although in an extremely technical sense the action may have commenced, we did not then know whether or not a law suit would actually be initiated in any operative sense against one or more of the real estate executives. We very much hoped that it would not be necessary to make service. As matters developed, it was our judgment that process should be served upon the three named employee defendants.

9. At the time of the interviews, we knew of no lawyer representing any one of the real estate executives. My own experience, which has been rather extensive in matters of this kind since May 1952, has involved representation of clients

in many such matters. Quite a number of them, involving very large sums, were completely resolved as a result of the first interview without any attorney participating on the other side.

10. There was no attempt to deprive any one of the right to counsel. Had anyone refused to talk or expressed unwillingness to talk unless he had his attorney present, there would have been immediate termination of the interview and compliance with such wishes. Neither Mr. Haines nor anyone else took such position. Quite the contrary: Mr. Haines was expressly informed of his right to have an attorney present when he took the polygraph examination and made not the slightest attempt to do so. Mr. Haines, as well as all of the other executives were free at all times to refuse to talk, to get up and leave, or to take any other action they desired.

11. Mr. Haines' willingness to talk - one might say his desire to do so - is reflected in the fact that he did so quite volubly and that he voluntarily and freely agreed to take a polygraph examination and signed an explicit acknowledgement of the fact that he had been advised of his right to have

an attorney (see Exhibit 4). Even more significant is the fact that after taking that polygraph, he resumed his meeting with Mr. Kirschner and continued with the interview.

12. Furthermore, the transcript of that interview belies Mr. Haines assertion that he was pressured in any way and the tenor of both the earlier and the subsequent interviews indicate that there just never was any request on his part as to whether or not he should secure an attorney, and most assuredly there was no statement by Mr. Kirschner that he would tell him if he needed an attorney. That contention is made up of whole cloth because it is clear that there was no compulsion of any kind; no threats; no intimation of threats; no duress.

13. Mr. Haines makes other statements. One is to the effect that he has reason to believe that copies of his recording or transcripts were furnished to the United States Attorney. That is entirely untrue. No such documents have been furnished to any law enforcement body whatsoever. Indeed, Grant did not communicate with any law enforcement body until after the conclusion of argument in this Court on February 3, 1975 at which time I went to the United States Attorney's office, reporting the then known facts and furnishing a copy of papers already served and filed. Furthermore, there was no "implication"

that Mr. Haines or anyone else would be discharged if they did not take a polygraph examination. Three of the real estate executives refused to take such examination; two of them are still employed by Grant and I do not know at this time of any fact whatsoever that would result in their termination in connection with the kind of acts alleged in the complaint.

14. I submit that in view of the very serious factual data which had come to Grant's knowledge, it was completely justified in having a confrontation with the top executives of its real estate department. These men were entrusted with the highest kind of fiduciary duty to Grant. Their duty of loyalty required them to make full disclosure of all relevant facts to Grant and Grant had the right to call upon them to do so at any time, but particularly at that time, in view of said facts plus the reports that were being received of possible skullduggery in connection with the sub-leasing of Grant stores to third parties.

In addition, I was receiving additional factual information from Mr. Head during that week, extending beyond the data set forth in his statement annexed to the Order to Show Cause for an attachment. Such additional information impelled me to advise Grant to try to come to grips with the entire situation as soon as possible.

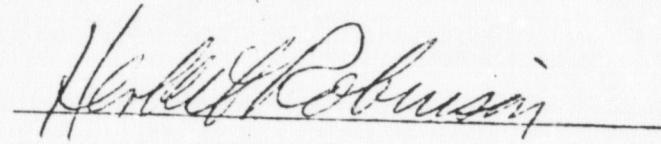
15. All interviews were in fact held prior to any of the defendants representation by counsel and neither Grant nor its outside counsel in this matter knew of the representation of any one of the executives by any counsel. Indeed, I am of the opinion, although I do not know so as a fact, that none of the attorneys participating in this matter on behalf of the employee defendants were previously their counsel or even known to them.

16. I address myself briefly to the remarks made about one item of media publicity, the report of an interview with me which appeared in the New York Times on February 10, 1975. That interview was held on February 7, 1975 pursuant to request initiated by the Times on February 6, 1975. During the course of the interview I did not mention or discuss the Grant case in any way whatever. I did not mention the name of any client. I had made it a condition of the interview that I would not discuss any clients, and the Times agreed to that condition. The reference to Grant in the report was introduced by the reporter without any participation on my part. My discussion concentrated upon a critique of business fraud and the evils to society resulting from it. The illustrative material was not limited to cases which I had handled. Any characterization of myself in that article,

as well as the mention of my firm's name, was at the instance of the reporter. I had a straightforward interview concerning the subject of commercial bribery and did not indulge in discussion of myself or my firm. (See Pars. 12-18 prior affidavit of Allan J. Kirschner, sworn to February 24, 1975).

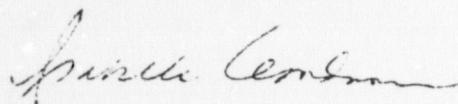
17. Haines complains of injustice. Documentary evidence establishes prima facie that Haines committed violations of the Federal Antitrust Laws, of various State laws, and that he violated in an extreme degree the most basic fiduciary duties that a highly paid, high level executive owes to his employer. The administration of justice would be ill served by any dismissal which would prevent Grant and thereby its stockholders and creditors from securing the financial restitution to which they are entitled against Haines, as would also be true were my firm to be disqualified herein since that would necessitate retention of new counsel with its attendant additional expenses and extra work burdens on Grant. I do not mean to suggest in any way whatsoever, by my foregoing comment, that there is any merit in law or fact to Haines' motion. I respectfully submit that Grant's opposing affidavits and our memorandum of law establish that neither the cases relied upon by Haines, rulings of ethics, nor the facts, support his motion.

17. In view of the foregoing, I respectfully submit that Haines' motion be denied in its entirety.



HERBERT ROBINSON

Sworn to before me this
11th day of April, 1975.



ISABELLE CODD, N
Notary Public, State of New York
No. 41-6591250 Queens County
Certificate filed in New York County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiff,

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AFFIDAVIT IN OPPOSITION
TO DEFENDANT HAINES'
MOTION TO DISMISS

4 of 5

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ROBERT J. KELLY, being duly sworn, deposes and says:

1. I am Vice President and General Counsel of W. T. Grant Company ("Grant") and am familiar with the facts recited in this affidavit which is submitted in opposition to defendant Haines' motion to dismiss this action against him or to dis-

qualify the firm of Liebman, Eulau, Robinson & Perlman.

2. I was present and participated with Mr. Kirschner during the interview of Haines at Grant's offices on January 31, 1975. Haines and I have known each other for a number of years. He knew that I am General Counsel for Grant. Mr. Kirschner was introduced as an outside attorney for Grant and Mr. Kirschner stated that he was not an employee of Grant but one of Grant's outside counsel who was retained in connection with certain irregularities concerning Grant's real estate department which had recently come to the attention of Grant's management.

3. Mr. Haines was in New York on January 31st to attend a previously called business meeting of Grant's entire real estate department. He and all other real estate negotiators and members of the real estate committee were present in New York on that date (see my prior affidavit sworn to March 18, 1975 which I hereby incorporate with this affidavit with the full force and effect as though set forth at length). No threats or promises were made to Mr. Haines by Mr. Kirschner or myself. Mr. Haines consented to discussing this matter with Mr. Kirschner and myself (as Mr. Haines' superior I had an absolute right to confront him) and Mr. Haines voluntarily agreed to cooperate. At no time did Mr. Haines request an attorney. At no time did I or Mr. Kirschner advise Haines that he did not need an attorney.

4. Although Mr. Haines takes the position that he was disadvantaged, he made no admissions of any kind concerning any facts of which Grant did not already have documentary knowledge and information obtained orally from a person having knowledge of the facts. We knew, by virtue of facts already in our possession, that Haines had received sizeable sums from John Waits and corporations and associations owned or controlled by him. We did not know what Mr. Haines' explanation for his receipt of such substantial sums would be. When he told us that he received \$33,000 from Mr. Waits as partial investment in property that was owned by Haines in Puerto Vallarta, Mexico, we were of the opinion that Haines was not making true disclosure but was attempting to cover up his improper activities. Thus, no unfair advantage was taken of Mr. Haines. In a sense, the reverse is true for Mr. Kirschner informed Mr. Haines of, and showed him all of the documentary evidence that was then in Grant's attorneys' possession concerning Mr. Haines' illegal acts and breaches of fiduciary duties.

5. Mr. Haines' statement that his "only office of employment at Grant" was in Georgia (see Par. 2, p. 1) is an attempt to mislead this Court. As set forth in Mr. Kendrick's accompanying affidavit, based upon travel and expense documents

filed by Haines, Haines was in New York on Grant business on at least thirty-five (35) days in 1973 and 1974. When he came to New York he used the office space that was available to him as set forth in paragraph 7 of my aforesaid prior affidavit. All of the visits made by Haines to New York were in connection with his position on the Southeast Regional Director of Grant's real estate department.

6. Mr. Haines is also in error when he states that the attorneys from the Liebman, Eulau, Robinson & Perlman firm were present in the Board of Directors room. (Par. 5, p.2) The only persons present in the room were Grant's employees and executives. I took Mr. Haines to another office in our building where he was introduced to Mr. Kirschner as one of Grant's outside counsel and as set forth supra, Mr. Kirschner made it clear that his firm was retained by Grant in connection with the irregularities in the real estate department which had recently come to the attention of Grant's management. The delay between the commencement of the meeting in the Board of Directors room at approximately 9:00 A.M. and the interview process which commenced at approximately 9:30 A.M. was caused only by logistic problems relating to office space and had nothing to do with any "outside information" that Mr. Haines thinks we

were waiting for.

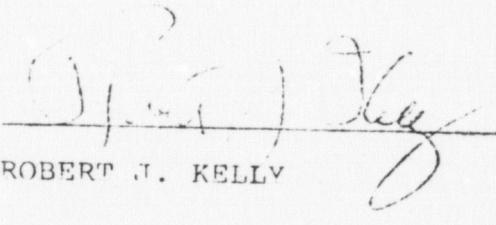
7. Mr. Haines makes it appear that he was interrogated in a "separate office" from 10:00 A.M. until 3:05 P.M. (Par. 5, p. 3). This is also not true. The interview with Mr. Kirschner and myself lasted no more than 45 minutes. When Mr. Haines voluntarily agreed to take a polygraph examination he was escorted to another room to await the arrival of a polygraph examiner. As set forth in the accompanying affidavit of Mr. Kirschner, Mr. Kirschner did not see Mr. Haines again until between 2:00 and 2:30 P.M.

8. Mr. Haines' statement (par. 8, pp 3 and 4) that Mr. Kirschner told him it was allright to sign authorizations is also incorrect and is refuted by the transcript of the tape recordings, which Mr. Haines also voluntarily permitted. As set forth in the transcript, Mr. Kirschner made it perfectly clear that without the authorizations we might not be able to obtain some of the information requested. Mr. Haines understood this and voluntarily executed those authorizations in Mr. Kirschner's and my presence. At no time did Mr. Kirschner or I state or indicate that we could obtain the information whether or not he signed the authorizations.

9. Although Mr. Haines admits that he was told he could refuse to take the polygraph test (par. 10, p. 4) he states

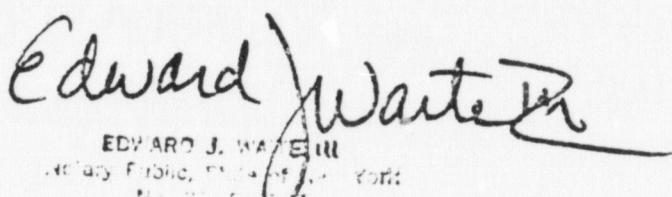
that there was an "implication" that his refusal would lead to unfortunate consequences in respect to his relationship with Grant. That is also not true and is once again refuted by the transcript of the tape recording, as well as by the fact that two other executives refused to take such test and are still in Grant's employ.

10. In view of the foregoing, it is respectfully submitted that neither Haines nor anyone else was lured into New York or that they were there for any improper purpose, or that anything that occurred on that date was a violation of any canon of ethics or of any of Mr. Haines' rights. Thus, Haines' motion should be denied in all respects and his deposition, as well as the depositions of his banks, should proceed forthwith.



ROBERT J. KELLY

Sworn to before me this
9th day of April, 1975.



EDWARD J. WATERBURY
Acting Public Defender, New York
No. 205
Dated in New York City
Comm. on Cr. Ls., March 30, 1975